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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF TORTURE AND DETENTION

Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1999/32

Addendum

Visit of the Special Rapporteur to Kenya

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* The annex is reproduced in English only.

Introduction

1 Following a request by the Special Rapporteur in January 1996, the Government of Kenya invited him in 1998 to undertake a fact-finding mission to the country within the framework of his mandate The objective of the visit, which took place from 20 to 29 September 1999, was to enable the Special Rapporteur to collect first-hand information from a wide range of contacts in order to better assess the situation of torture in Kenya The Special Rapporteur can therefore recommend to the Government a number of measures to be adopted in order to comply with its commitments with a view to putting an end to acts of torture and other forms of ill-treatment

2 During his visit the Special Rapporteur held meetings with the following authorities in Nairobi President Daniel arap Moi, the Attorney-General, Mr Amos Wako, the Minister for Internal Security, the Minister of State in the Office of the President in charge of Security and Provincial Administration, Mr Marsden Madoka, the Minister of State in charge of Defence, the Assistant Minister for Foreign Affairs, Mr Sheldon Muchilwa, the Chief Justice, Mr Bernard Chunga, the Permanent Secretary to the Cabinet and Head of the Civil Service, Dr Richard Leakey, the Commissioner of Police, Mr Philemon Abongo, and the Commissioner of Prisons, Mr Edward Lepokoiyot The Special Rapporteur regrets that the Permanent Secretary of the Minister of Health, Prof Julius Meme, could not receive him on the occasion of the appointment scheduled for the purpose Finally, he also met with several members of the Standing Committee on Human Rights

3 The Special Rapporteur visited the following cities in Kenya besides Nairobi Nakuru and Garissa In both cities the Special Rapporteur met with the provincial authorities, including the Provincial Commissioner, District Commissioner and the Provincial Police Officer, and visited police lock-ups He also visited Nakuru and Garissa GK Prisons, but was denied access to Kamiti Maximum Security Prison in Nairobi

4 The Special Rapporteur also met persons who themselves or whose relatives had allegedly been victims of torture or other forms of ill-treatment and he received verbal and/or written information from non-governmental organizations (NGOs), including the following the Independent Medico-Legal Unit, the Kenyan Human Rights Commission, People Against Torture, and the Commission on Ethnic Violence of the Law Society of Kenya Finally, he also met lawyers and medical doctors

5 The Special Rapporteur wishes to thank the Government of Kenya for having invited him and for extending full cooperation during his mission, thus making his task much easier He also wishes to express his gratitude to the Acting Coordinator of the United Nations Development Programme and his staff for their logistic and other support

I THE PRACTICE OF TORTURE SCOPE AND CONTEXT

A General issues

6 During the course of the past few years (see E/CN 4/1996/35/Add 1, paras 414-425; E/CN 4/1997/7/Add 1, paras 289-307; E/CN 4/1999/61, paras 426-435), the Special Rapporteur

had advised the Government that he was receiving information, supported by a high number of individual cases, according to which the use of torture by the police to obtain "confessions" was almost systematic. Torture was also reportedly inflicted to intimidate detainees, to dissuade them from engaging in political activities and to extract bribes. Officers of the Directorate of Security Intelligence (DSI or "Special Branch" - since disbanded), the Criminal Intelligence Department (CID), members of the so-called "flying squad", an elite force created in 1995 responsible for investigating armed robbery and carjackings, officers of the Kenya Wildlife Service (KWS) and of the local administrative police and members of the Kenya African National Union (KANU) Youth Wing, the youth division of the ruling party, were also said to carry out torture (see annex). The methods of torture were said to include: beatings, especially with wooden or plastic sticks; whippings on different parts of the body, especially the feet; beatings to the soles of the feet while suspended upside down on a stick passed behind the knees and in front of the elbows; rape and other genital abuses, such as inserting objects into the vagina and pulling of the penis or pricking it with pins.

7. Although detainees accused of offences for which the death penalty is not applicable are legally permitted to be held incommunicado for no more than 24 hours, in practice such detainees were reportedly often held incommunicado well beyond this limit. It was alleged that in order to maintain a state of incommunicado detention, officers often moved detainees from one police station to another upon arrest. It is during these periods that most torture and ill-treatment allegedly occurs.

8. Persons wishing to file a complaint against the police for ill-treatment were said to be discouraged or refused permission by the police to fill out the required form, the "Medical Examination Report", known as the P3 form. Even when such forms were completed, they were said to be frequently lost or removed from case files. Many victims reportedly did not complain because prior to their release they might have been subjected to police threats of rearrest or other adverse consequences if they did so.

9. The Special Rapporteur had also transmitted to the Government information according to which courts rarely investigate complaints of torture, examine medical evidence, question the lack of medical treatment of a prisoner who alleges that he or she had been tortured, or declare evidence or confessions of guilt inadmissible when extracted by torture. Lawyers defending prisoners alleged to have been tortured have reportedly been threatened. The denial of medical care to prisoners was alleged to be prevalent. Private doctors were said to be frequently denied access to prisoners or to have to overcome such obstacles as obtaining a court order in order to gain such access. Doctors who were able to examine prisoners allegedly faced intimidation from warders. According to the information received, detainees were often refused access to hospitals or when taken to hospital were sometimes removed before treatment had been completed.

10. Finally, the Special Rapporteur had advised the Government that he was receiving information according to which prison conditions were extremely harsh and life-threatening. Prisoners were reportedly subjected to severe overcrowding, inadequate potable water, poor diet, sub-standard bedding and deficient health care. Furthermore, sick prisoners were said to be transported in the back of lorries, rather than ambulances, and reportedly often died while being transported to hospital. It was also alleged that some sick prisoners were not transported at all

despite magistrates' orders. According to NGOs, scores of prisoners died, the majority from infectious diseases resulting from overcrowding and shortage of food, clean water and basic medication. It was reported that over 630 prisoners died in 1997.[1]

11. During his mission, the Special Rapporteur received information from non-governmental sources and a very large number of accounts by alleged torture victims or witnesses, of which a selection is reproduced in the annex to this report, indicating that torture is widespread and used indiscriminately against many people under arrest. However, it appears that most cases are not reported to the relevant authorities because of ignorance, lack of judicial assistance or fear of reprisals. Beatings appeared to be the most common practice. The purpose of those acts was allegedly to extract confessions or bribes, to punish or intimidate individuals suspected of having committed a crime. A number of deaths in custody allegedly as a result of torture were also reported.

12. According to the Independent Medico-Legal Unit (IMLU), 98 per cent of injuries documented in approximately 400 cases referred to it between September 1998 and August 1999 were musculo-skeletal injuries allegedly mainly caused by beatings with blunt objects. Twenty-five per cent of the patients had sustained neurological injuries affecting their vision or hearing. Victims of torture were said to range in age from 7 to 97 years, with the majority of cases referred concerning young men between 20 and 35 yearsof age. IMLU also reported that it had carried out 40 post-mortems of death in police custody of which 36 allegedly showed the cause of death to be internal injuries suffered as a consequence of external trauma.

13. All officials met by the Special Rapporteur, in particular the Minister of State in charge of Internal Affairs and the Assistant Minister for Foreign Affairs, affirmed that the Government does not condone torture, but admitted at the same time that some law enforcement officials may from time to time overreact. In particular, they stressed the problem of the level of violence, especially armed violence, that the police had to face. They explained to the Special Rapporteur that police officers, sometimes ill-equipped, had therefore to use force on some occasions in order to defend themselves. They assured the Special Rapporteur that in all cases where there appeared to have been an overreaction by law enforcement officials, the Government was committed to taking all relevant measures. In their opinion, police violence was nevertheless not a widespread phenomenon.

14. The Assistant Minister for Foreign Affairs emphasized that Kenya was in the midst of changes supported by the Government and the President himself, but that it would certainly take time for old habits to change. Similarly, the Head of the Civil Service recognized that the rough treatment of those arrested or detained was culturally accepted, or even supported, by the population. But he also emphasized that there was a genuine commitment from the highest authorities of the country to eradicate this phenomenon and that, in his opinion, major changes had already occurred in the past five years. Some NGOs confirmed that violence is a culturally accepted practice in Kenya and therefore emphasized the need to educate the public. A large number of their activities are devoted to this.

15. According to all the Special Rappporteur's interlocutors, including non-governmental ones, cases of torture of political detainees had considerably diminished since the establishment of a multi-party political system in the early 1990s. The National Intelligence Service, known as

the "Special Branch", which was reported to have tortured political opponents held in its offices in Nyayo and Nyati Houses, has for example been disbanded. Similarly, there have been no more reports recently regarding torture of persons from the Western Province accused of support for, or membership of, the alleged opposition guerrilla movement, the February Eighteenth Movement (FEM) or the February Eighteenth Resistance Army (FERA) since the mid-1990s. Excessive force is nevertheless said to have been used on several occasions by the police, reportedly assisted by members of the KANU Youth Wing, on peaceful protestors and participants in opposition political rallies (see annex). It is reported that there is a growing reliance on State-sponsored gangs to break up meetings and rallies of government critics. Both ruling party and opposition parties are said to have created their own civilian security groups. According to NGOs, the majority of victims of torture or other forms of ill-treatment are persons suspected of involvement in murder and robbery with violence. Torture is said to be aimed at obtaining confessions or at punishing. As modern methods of investigation are said to be rarely used, the police reportedly resort to torture in order to obtain information which will allow them to close cases.

16. The Minister of State in charge of Defence informed the Special Rapporteur that the military forces were very rarely employed in the maintenance of law and order, except in the northern part of Kenya, an area particularly affected by banditry and where arms are said to be illegally smuggled into the country. According to NGOs, torture has been carried out by both the military and the police as a form of communal punishment in this part of the country. The residents of whole villages are said to be rounded up and subjected to severe beatings, rape and summary executions (see annex). In case of abuses by the military, the Minister indicated that strict measures were being taken in accordance with the military rules. For example, he informed the Special Rapporteur that the May 1999 incident in Marsabit during which civilians were allegedly ill-treated (see annex) was the object of an investigation.

17. The Special Rapporteur also received information according to which the police round up the poor, women, street children, migrants and refugees in mass arrests. Asylum-seekers, in particular Ethiopian Oromos suspected of being members or supporters of the Oromo Liberation Front, and Somalis were said to be detained beyond the legal limit, ill-treated and threatened with forcible return to countries where they would be at risk of torture and other human rights violations. Street children in urban centres are routinely rounded up and detained. They are allegedly subjected to beatings, sexual abuse and extortion by the police. They are said to be held for days or weeks and when eventually brought to courts to be charged with vagrancy, or are classified as being "in need of protection or discipline". It is reported that there are over 40,000 street children in Kenya.[2] The poor are also reported to be victims of police violence. Police raids on shantytowns are said to be conducted at night, without search warrants. The police allegedly end up beating people, demanding money in exchange for freedom and sexually harassing women.

18. "Mob violence" or "justice" was also reported to be a phenomenon in Kenya and was explained by some officials by a lack of confidence in the police and the administration of justice. A higher number of incidents have been reported in urban centres in the past five years. Non-governmental sources also suggested that the population was reproducing police behaviour. According to the Kenyan Human Rights Commission, more than 130 people died owing to mob

violence during the first semester of 1999.[5] It was alleged that this form of violence was carried out with the tacit approval of the police and that the police were reluctant to investigate such cases.

19. Finally, the Special Rapporteur was informed that since January 1998 there had been a resurgence of politically motivated "ethnic clashes", especially in the Laikipia and Nakuru districts of the Rift Valley province, areas where large numbers of persons were said to have voted against the current Government in the December 1997 general election. Over 120 people were said to have been killed and thousands displaced. It is reported that for the first time members of the Kikuyu community, the largest (21 per cent of the Kenyan population) of the more than 40 ethnic groups living in Kenya, retaliated to attacks in an organized manner, justifying this by claiming that the government forces had failed to protect them and to take the necessary measures to punish the perpetrators. According to the information received, local ethnic divisions and disputes appear to be deliberately inflamed for political purposes.[6] In June 1998 a judicial commission of inquiry was set up to look into the causes of ethnic clashes that had affected the country since 1992.

II. Information concerning the police

20. During his mission, the Special Rapporteur visited the following police stations: in Nairobi, Kikuyu and Thika; in Nakuru, Menengai and Njoro; and in Garissa, the police headquarters. The first visit of a police lock-up took place in the evening of 22 September at Kikuyu police station. The Special Rapporteur was first given access to the cells and was allowed to speak with detainees by police officers of junior rank who had attempted without success to contact the officer-in-charge of the station and had verified the credentials of the Special Rapporteur's delegation. After approximately one hour, the Special Rapporteur was interrupted and prevented from continuing his visit by the officer-in-charge of the police station (OCS). Despite previous assurances by the Minister of State in charge of Internal Affairs and the Commissioner of Police that the Special Rapporteur would be allowed full access to all police lock-ups and would be able to conduct confidential interviews with detainees, the OCS denied the Special Rapporteur the right to pursue his visit after consulting by telephone with the officer-in-charge of the Police District (OCPD). The OCS said that the OCPD had not received any order from his superiors regarding this visit and its terms of reference. However, the OCS invited the Special Rapporteur to come back the following morning. On the morning of 23 September, the Special Rapporteur's team returned to Kikuyu police station and was again refused access by the same police officer. After this incident, the Commissioner of Police appointed a Senior Assistant Commissioner to accompany the Special Rapporteur during his mission in order to ensure access to all police stations and lock-ups. The Special Rapporteur wishes to thank the Assistant Commissioner, whose cooperation greatly facilitated his work.

21. In most of the police lock-ups visited by the Special Rapporteur, there existed a serious problem of overcrowding. Detainees complained about the lack of space and of ventilation. In Kikuyu police station, the problem of overcrowding was manifest at the time of the Special Rapporteur's visit. In one of the three cells, which measured approximately 15 square metres, 13 men were being detained. According to one detainee, who had been held in this cell for 12 days, more than 40 people had been detained in this cell at the same time a few days before. Owing to the fact that the three cells were completely filled with men, nine women and

two infants had to lie on blankets in the small corridor between the cells, under the direct supervision of police officers on duty. They therefore had no privacy. At Thika police station according to the cells register, the official holding capacity of the five cells is 150 detainees. At the time of the Special Rapporteur's visit the cells contained 129 persons. Despite the fact that the cells were not filled to their official capacity, in all of them, except the one holding women, it was impossible for detainees to lie down at night. A detainee indicated that the day before around 40 persons had been detained in his cell, while only 12 persons were detained at the time of the Special Rapporteur's visit, and that three persons had fainted because of the lack of ventilation. At the time of the Special Rapporteur's visit on 27 September, the two cells at the Garissa police headquarters were empty. Each cell measured approximately 10 square metres. According to the cells register, these two cells had together held up to 72 persons on 23 September.

22. None of the cells visited contained furniture, except blankets which were apparently given to detainees at night and some occasional straw mattress. Most detainees were sleeping on the bare concrete floor. It should be noted that all the cells visited were relatively clean, although fetid. Indeed, most police lock-ups did not have toilet facilities and detainees were therefore provided with a bucket which, according to them, was emptied regularly. Opportunities for bathing were very restricted or non-existent. In some police station courtyards, there were rudimentary showers. Most cells were inadequately ventilated and lighted.

23. According to the various authorities encountered during visits to police stations, the different categories of detainees are clearly segregated. Indeed, in all the police lock-ups in which women were detained at the time of the visit of the Special Rapporteur, i.e., Kikuyu, Thika and Njoro police stations, they were separated from men. Juvenile suspects were generally detained in the women's cell. But detainees were not divided according to the seriousness of the crime they were suspected of, and detainees convicted for previous crimes were mixed with first-time suspects.

24. Except in Thika police station, most detainees interviewed by the Special Rapporteur had been subjected to torture or other forms of ill-treatment and were bearing visible recent marks consistent with their allegations (see annex). In the Criminal Investigation Department (CID) offices at Kikuyu, Njoro and Garissa police stations, the Special Rapporteur saw whips, wooden sticks and rubber hoses consistent with those described by the alleged victims. No explanation for the presence of such instruments in police offices was given. Some police officers argued that they were items of evidence, but none of the instruments carried an identifying label such as to convince the Special Rapporteur that this explanation was even plausible.

25. On 27 September, the Special Rapporteur visited the Garissa police headquarters. At the time of his visit, its two cells were empty. The cells register, however, indicated that 17 persons had been detained in these cells until the morning of that day. According to the cells register, one person had been taken to hospital, one had been transferred to Thika police station, five had been released and nine had been taken to court. No entry had been made next to the name of one detainee, Ali Mohammed Hassan (see annex), and no explanation could be given to the Special Rapporteur as to his current whereabouts by the police officers present, including the Officer-in-charge of the Police District (OCPD). The Special Rapporteur informed the OCPD that he wanted this person to be produced before him, as it seemed that he had neither been

released, nor transferred to a prison or another police station. After several hours, Ali Mohammed Hassan was eventually returned to the police headquarters by police officers. He informed the Special Rapporteur that he had been hidden from the Special Rapporteur at the Chief's office and that another man, Abubakar Abdi Noor (see annex), who was in a critical state of health, was still detained there. According to the cells register, Abubakar Abdi Noor had been taken to court on 27 September. Contrary to entries on suspects who had been taken to court, no mention of the time of his transfer to court had been written down in the cells register. The Special Rapporteur informed the OCPD that he was not going to leave the police headquarters before having seen this person. At 2.30 a.m., Abubakar Abdi Noor was eventually produced before the Special Rapporteur. No explanation was given by the police officers present, who admitted, however, that both men had been detained at the Chief's office. The Special Rapporteur believes that these two persons were intentionally hidden from him because of the treatment they had been subjected to and that others may have either been released or transferred to other places of detention for the same reason. His belief is reinforced by the fact that two persons who had been detained at the Garissa police headquarters and had been transferred to Garissa GK Prison on 24 September, Issa Suko Abdi and Abdulrashid Hassan (see annex), had allegedly been tortured while in detention at this police lock-up.

26. Finally, the person who had been transferred to the hospital (whose name is known to the Special Rapporteur) had been arrested on 15 September on suspicion of robbery with violence. On that date the occurrence book recorded that he had received gunshots to his right arm. According to the occurrence book, he had been taken to the hospital for treatment on 23 September and taken back to the cell on the same day. Despite the fact that the cells register stated that he had been sick since 24 September, he was eventually taken to the Garissa general hospital the day of the Special Rapporteur's visit to the police headquarters (27 September). When the Special Rapporteur's team visited him at the hospital the following day, his state of health did not allow him to be interviewed. According to the medical doctor who had done the surgery, a plaster had been put on his open wounds which had caused an infection, but it was not envisaged to amputate his arm.

27. The Special Rapporteur commended all police officers for the seriousness with which they are keeping detailed records in the occurrence book and cells register, despite the existence of serious discrepancies between the reality of the well-being of those detained and the annotations in these books. According to the Commissioner of Police, both books are checked daily by the officer-in-charge of a police station, who is therefore in a position to verify that his subordinates are respecting the rules and to take the necessary disciplinary actions, if need be. Furthermore, the officer-in-charge is also requested to routinely visit all cells to see the detainees' state of health.[5] The Special Rapporteur believes that the senior police officers in charge of most of the police stations he visited had not properly fulfilled their supervisory duties or had not taken the appropriate actions.

1. Torture compounded by denial of medical treatment

28. On 22 September at Kikuyu police station, the Special Rapporteur interviewed two girls, Mary Njeri (aged 17) and Zippora Ndiko (aged 15), whose feet were manifestly swollen and whose legs bore visible marks of ill-treatment, such as open wounds and haematomas (see annex). They had reportedly been arrested on 17 September on suspicion of having participated

in a carjacking and taken to this police station on 19 September. Despite their requests and their physical condition, a mention "appear fit" had been written down next to their names in the occurrence book and they had been denied medical treatment. The Special Rapporteur expressed his serious concern to the officer-in-charge and requested that the two girls be given immediate and appropriate medical treatment. On 28 September, when the Special Rapporteur made a second visit to Kikuyu police station, the two girls informed him that after his departure they had been summoned by the officer-in-charge to repeat what they had reported to the Special Rapporteur. They were then allegedly told that despite the Special Rapporteur's intervention they would not get any assistance and were sent back to the cell without being provided with medical treatment. It must be noted that the two girls were successively detained in three different police stations without receiving medical attention in any of them. After the second visit of the Special Rapporteur, assurances were given to the Special Rapporteur by senior police officers that the two girls were going to receive prompt and appropriate medical attention.

29. At Njoro police station, the Special Rapporteur noticed the presence in the cell of at least three individuals requiring urgent medical treatment (see annex, case of Julius Odhiambo Odienya et al.) while most of the others were bearing serious visible marks of ill-treatment. Seven, including the three whose health was of very serious concern to the Special Rapporteur, had been arrested on 21, 22 and 23 September and taken to Menengai police station where they had allegedly been tortured, before being transferred on 24 September to Njoro police station. In the Njoro cells register, a mention "appear fit" had been written next to their names, while in the occurrence book, the following was written: "all booked in with injuries on the faces, legs, and blood stains on their clothes, searched and placed in cells while in pain". According to their testimonies, the officer-in-charge of Njoro police station never saw them. Upon the Special Rapporteur's request, six detainees were immediately taken to the hospital, while it was promised that others will be taken to the hospital the following morning. According to information received, the officers-in-charge of Menengai and Njoro police stations were under investigation at the time the Special Rapporteur left the country. No information had been received by the Special Rapporteur on the results of these investigations at the time of writing.

30. These two serious incidents, as well as information received by the Special Rapporteur during his mission, led him to believe that non-governmental organizations' and private doctors' concerns regarding the lack of will of police officers to give appropriate medical treatment to those requiring it while in their custody is well-founded.

2. The "flying squad"

31. According to information received from non-governmental sources, the "flying squad", a unit not explicitly created by a statute, was established in 1995 to respond to a growing spate of carjackings in urban centres, especially in Nairobi. Its officers are said to be drawn from the CID and the General Service Unit and are based at the Pangani police station in Nairobi and at Makuyu police station in Thika district. Numerous serious cases of torture involving "flying squad" members were reported to the Special Rapporteur prior to and during his visit (see annex). It is alleged that the Chief Inspector of this special unit (whose name is known to the Special Rapporteur) is involved in a large number of these cases. According to the information

received, persons arrested by the "flying squad" when taken to police stations are held in incommunicado detention for long periods of time, since the police claim that these detainees are not under their jurisdiction and therefore refuse access to them by anybody.

32. Regarding the "flying squad", the Minister of State in charge of Internal Affairs emphasized the difficulty of its task, namely to apprehend very violent criminals, and indicated his satisfaction regarding the execution of their duties. He nevertheless recognized that some innocent persons may have unintentionally been harmed in the process. He further indicated that some members of the "flying squad" had been disciplined for their actions.

3. The administration police

33. According to information received from NGOs, individuals are frequently detained by the administration police, who assist the national police under the authority of Chiefs, District Officers (DOs) and ultimately the provincial commissioner. Nevertheless, the Nakuru Provincial Commissioner explained to the Special Rapporteur that in practice the administration police were under the operational authority of the Provincial Police Officer. While they have the power to arrest suspects, they are required to immediately take them to the nearest police station, since only the national police have the power to detain. It is, however alleged, that arrested persons are frequently taken to the Chief's or DOs office, where they are arbitrarily detained and, according to the information received by the Special Rapporteur, often tortured (see annex). It must be noted that the Chief's premises were used in Garissa to hide two persons from the Special Rapporteur (see para. 25 above). Furthermore, it is alleged that Chiefs and DOs frequently hold "kangaroo courts", in which detainees are fined. An inability to pay on the part of a detainee is said to often result in the person being subjected to physical violence by the administration police.

34. The Nakuru provincial authorities indicated to the Special Rapporteur that, owing to the lack of means of transport, the administration police were not always in a position to transfer a person to a police station immediately, especially in remote areas. They recognized that some people might have spent a night at a Chief's or DOs office. But they emphasized that a Chief or DO who has held a suspect for more than 24 hours would be the subject of a disciplinary action. According to the Attorney-General, the detention of a person by the administration police constitutes an abuse of authority and the Permanent Secretary of Internal Security indicated that he had disciplined Chiefs and DOs for abuse of authority in the past. No specific case was mentioned. According to most official interlocutors, the fact that every 12 hours the administration police must report to the Provincial Police Officer the number of persons they have arrested is a sufficient guarantee ensuring that nobody is arbitrarily detained by the administration police.

35. Complaints against the administration police are reportedly dealt with by the national police. More generally, complaints against the provincial authorities are always referred to the national authorities. For example, following the April 1999 Eldoret incident in which Isaac Mwaniki Gitari (see annex) died, allegedly as a result of torture, the State Counsel who represented the Attorney-General at the provincial level had ordered an inquiry. The results of this inquiry were not known at the time of writing.

C. Information concerning prisons

36. It is not within the mandate of the Special Rapporteur to describe and analyse the conditions of detention exhaustively. However, as with his visits to other countries, he took the opportunity while in Kenya to visit Nakuru and Garissa GK Prison, mainly in order to meet people who could testify to the treatment they had received before being transferred to prison. The Special Rapporteur regrets not to have been allowed to make such a visit to the Kamiti Maximum Security Prison despite his formal request, which had been accepted by the Commissioner of Prisons, and a two-hour wait at the gate of the prison.

37. All NGOs complained about the lack of access to prisons, despite the fact that the Prison Act does not explicitly prohibit the access of members of civil society to prisons. Little information was thus given to the Special Rapporteur on the conditions of detention. Even lawyers were said to experience problems in gaining access to their clients. When given access, they were required to remain in a specific room and therefore could not inspect the conditions of detention. Magistrates were supposed to visit prisons regularly, but were said to hardly do so. For example, according to the register seen by the Special Rapporteur, the last visits of a magistrate to Nakuru GK Prison took place on 3 December 1998 and 23 October 1995.

38. The Commissioner of Prisons indicated to the Special Rapporteur that he would welcome contacts with Kenyan non-governmental organizations. He said that NGOs' booklets on prisoners' rights had been widely distributed in prisons. He challenged the information according to which NGOs did not have access to prisons. He indicated that if foreign NGOs had access to Kenyan prisons, as was the case, he could not see any reason why local NGOs would be denied such access. According to information received from international NGOs, they themselves had not had access to prisons in Kenya, despite several requests.

39. According to non-governmental sources, access to medication is a problem for prisoners. Most prison medical units have very limited resources, which affects both the quantity and the quality of medication dispensed. When prisoners eventually receive medication, they are often asked to pay for it. Where prisoners or their families are unable to pay for medical treatment, the medical treatment provided was denied or insufficient. The Special Rapporteur also received information about the resulting inadequacy of medication, such as the sole provision of temporary painkillers for injuries requiring more intensive treatment.

40. Regarding the reported lack of medical care, the Commissioner of Prisons indicated that every prison possesses a dispensary and health centre. Medical personnel in prisons are under the authority of the Ministry of Health (other prison personnel are under the authority of the Ministry of Home Affairs), but, as indicated by the Commissioner, very few prisons, except in Nairobi, have a doctor and instead have to rely on the District Medical Officer (DMO). According to NGOs, the DMO only very occasionally visits prisoners. According to the Commissioner, free medical treatment was provided to all detainees. He emphasized that the Minister for Home Affairs had given emergency funds for drugs where needed. The medical doctor present during the Special Rapporteur's visit to Nakuru GK Prison indicated that there was no shortage of medicines.

41. It must be noted that the Prison Rules provide that the medical officer shall examine a prisoner on several occasions: "(a) on the prisoner's admission to prison ... (c) before the prisoner undergoes corporal punishment or any other punishment likely to affect his health, and shall certify whether the prisoner is fit to undergo the punishment [and] ... (e) before the prisoner is discharged from prison."[6] Rule 26 provides that "[t]he medical officer shall - (a) see every prisoner at least once a month [and] ... (d) at least once every month inspect the whole prison, paying particular attention to the cooking and sanitary equipment in the prison". According to detainees' testimonies, these rules were not respected.

42. Regarding corporal punishment ordered by the prison authorities as a disciplinary sanction[7] (which is consistent with the prohibition of torture under the Constitution - see para. 52 below), the Commissioner of Prison indicated that for the last 10 years, he had not had any occasion to confirm any recommendation for the imposition of corporal punishment for a disciplinary offence (such confirmation would be required under article 55 (2) of the Prison Act). It was indicated to the Special Rapporteur that this type of punishment has to be carried out in the presence of a medical doctor (see para. 41 above). The Commissioner of Prison also informed the Special Rapporteur that since 1985 there has been a moratorium on the death penalty.[8]

43. There are 78 prisons in Kenya, which are meant to house 15,000 inmates and which, according to recent media reports, now hold over 50,000 prisoners.[9] The Commissioner of Prisons recognized that overcrowding, as well as access to potable water, were the main problems the Kenyan prison system was facing. The Commissioner indicated that the problem of overcrowding was exacerbated by delays within the judicial system, resulting in a considerable number of prisoners being held on remand for long periods, and by a lack of funding. He pointed out that prison officers had received human rights training. Some isolated cases of human rights violations in prisons might exist, but he held the opinion that any possible human rights violations within the system had been acted upon.

44. At the time of the Special Rapporteur's visit, Nakuru GK Prison was housing around 500 prisoners. Its official capacity is 600. The Provincial Commissioner of Prisons and the Governor of Nakuru Prison indicated that this prison had housed up to 800 prisoners in December 1998. Nonetheless, the Special Rapporteur was not granted access to the prison cells register. It was argued by the prison authorities that the office in which the register was kept was closed and could not be opened on a Saturday. In the documentation building, the Special Rapporteur noticed a blackboard on which was written: "convicted prisoners: 893; ordinary remands: 327; capital remands: 84; robbery with violence: 74; civil debtors: 2; safe custody: 4; lock-up total: 1,384". The Governor explained that these statistics referred to the number of persons who had been detained in the prison since the beginning of the month. This meant that more than 800 persons had either been transferred to another prison or released, as only 500 persons were said to be currently detained in Nakuru GK Prison. According to detainees' testimonies and information received from NGOs, a large number of prisoners, possibly 400, had been transferred to other prisons three days before the Special Rapporteur's visit, and 100 were said to have been transferred at around 1 a.m. the night before his visit. Several detainees indicated that the number of persons held in their ward had thereby been reduced by half. When questioned by the Special Rapporteur on the possible transfer of prisoners before his visit, the prison authorities indicated that such transfers to other prisons took place every week. The

Special Rapporteur has no doubt that the information he received from the detainees, who had no reason to expect to be interviewed by the Special Rapporteur, and from NGOs was more credible than the explanations of the Governor.

45. The authorities of the North-East Province indicated that there was no problem of overcrowding in the three prisons of the province, Garissa, Wajir and Mandera. They indicated that criminality was informally addressed within the communities, which could explain why the North-Eastern prisons were not facing the problem of overcrowding. At the time of the Special Rapporteur's visit, Garissa GK Prison was housing some 350 detainees, which was said to be its official capacity.

46. According to Rule 5 of the Prison Rules, "arrangements shall be made at all prisons to provide, as far as practicable, for effectively segregating the various classes of prisoners from each other at all times". The various classes are: Young Prisoner Class, which consists of convicted criminal prisoners under the apparent age of 17, Star Class, which consists of first-time convicted or well-behaved criminal prisoners, Ordinary Class, which consists of all other convicted criminal prisoners, and Unconvicted Class, which consists of prisoners on remand. Furthermore, persons sentenced to more than five years' imprisonment are transferred to maximun security prisons. All the officials the Special Rapporteur met indicated that the different categories of detainees were clearly segregated: men from women, adults from juveniles, and remand from convicted prisoners. (According to information received, detainees on remand are generally held in prisons, although the police may request the magistrate to allow continued police custody so that the detainee can help in the investigation.) During his visits to prisons, the Special Rapporteur was able to see that this segregation was generally respected.

47. The Nakuru GK Prison is divided into nine wards for convicted prisoners. Each ward was very clean and contained 17 mattresses on which was a folded blanket. There was also a prayer book, as well as sometimes a flower, on most mattresses. In some cells a mattress was said to be reserved for Muslim prisoners. It was explained to the Special Rapporteur that prisoners were sharing mattresses, since despite requests from the prison authorities there were not enough mattresses to accommodate all prisoners. Each ward contained very clean sanitary facilities, including a shower. New toilet paper rolls and soap were available in each. All convicted prisoners were wearing clean uniforms, while prisoners on remand were wearing their own clothes. It must be noted that capital remands were also wearing uniforms, despite the fact that they should be considered innocent until conviction. The prison authorities justified this measure by the fact that these prisoners would in all likelihood remain in detention for a longer time than other remand prisoners.

48. In Nakuru GK Prison, the Special Rapporteur also visited the prison library in which around 80 prisoners were said to have attended classes since January 1999, the workshop where 10 prisoners were said to be producing wood items sold outside the prison, and the dispensary where a clinical officer was present 24 hours a day and where medicines were at his disposal. A segregation block housed sick prisoners, in particular tuberculosis patients: 22 detainees were held there at the time of the Special Rapporteur's visit. Seven juvenile suspects were detained in the documentation building referred to above. Two boys, aged 14 and 15, indicated that before being transferred to this prison they had been held in Nakuru police headquarters and Ravin

police station for 11 and 20 days on suspicion of loitering and stealing respectively. While the former had been taken to court, the latter had reportedly not been brought before a magistrate. Their families were believed not to have been informed of their arrest.

49. The Special Rapporteur also visited the women's wing of Garissa GK Prison, the wards of which are completely separate from those housing men. All the prison guards were women, including the officer-in-charge of the wing. At the time of the visit, 50 convicted prisoners were sharing 22 mattresses in two wards and 56 prisoners on remand were sharing 16 mattresses in two wards. At least six women were accompanied by their infants.

50. All prisoners interviewed at the Nakuru GK Prison were chosen by the Special Rapporteur at random. It must be stressed that they were all afraid of possible reprisals from the prison guards. Indeed, they had been warned not to address the conditions of detention. They nevertheless referred to the fact that changes had recently been made for the Special Rapporteur's visit. The quality of the food, for example, had greatly improved on the day of the visit: vegetables had been added to the usual "ugali" (maize meal and water). The prison authorities denied this. On the question of food, the prison authorities confirmed that prisoners on remand were receiving half the ration of food for convicted prisoners. This was justified by the fact that remand prisoners do not work. According to non-governmental sources, this leads to some prisoners on remand pleading guilty in order to receive full food rations. According to detainees, meals had most of the time to be bought from the cooks. Access to water, in particular potable water, was said by the prison authorities and the detainees to be a recurring problem. Despite the new arrival of mattresses, the overcrowding problem was reported to be most manifest at night. According to several prisoners, there were so many persons in their respective wards that nobody could move.

51. Finally, the Special Rapporteur also visited the Nakuru prison guards' housing estate and was able to see the poor conditions in which the prison personnel was being housed.

D. Corporal punishment

52. Regarding corporal punishments ordered by a court as part of a sentence,[10] article 74 (2) of the Constitution of Kenya provides that they are not in contravention of the prohibition of torture referred to in paragraph 1 of the same article. The Attorney-General indicated that a motion had been presented in Parliament in July 1999 in order to abolish paragraph 2 of article 74. He agreed with the Special Rapporteur's statement that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.[11] No information, in particular statistics, was provided to the Special Rapporteur on the incidence of recourse to such punishment.

53. The Education (School Discipline) Regulations 1972 promulgated under the Kenyan Education Act (1968) authorize the use of corporal punishment in schools, subject to certain restrictions. They state that corporal punishment can be inflicted "in cases of continued or grave neglect of work, lying, bullying, gross insubordination, indecency, truancy or the like" (art. 11). Article 13 stipulates that only a cane "or smooth light switch" to the buttocks or a strap "not less than 1 1/2 inches in breadth" to the palm of the hand may be used and that a head teacher may not give more than six strokes as a punishment. Articles 12 and 14 lay down further conditions

which have to be fulfilled in order for corporal punishment to be carried out. Article 12 stipulates that it may only be imposed in the presence of the school's head teacher or principal and that it "may be inflicted only after a full enquiry, and not in the presence of other pupils". Article 14 states that records must be kept of all cases of corporal punishment. In A Manual for Heads of Secondary Schools (1987), the Kenya Ministry for Education further advised that punishments "must not mistreat or humiliate the student", must "relate to the offence" and should be adapted "to fit the individual child". Furthermore, teachers should "confer with parents and students where necessary".

54. Despite the various safeguards contained in the Kenyan legislation and a number of statements by the Minister of Education discouraging the use of the cane, the Special Rapporteur has received information on numerous cases where corporal punishment in schools was reportedly carried out in excess of the Education (School Discipline) Regulations 1972 with sometimes serious consequences for the physical and mental integrity of the child punished (see annex). According to the information received, remedies, such as the disciplining of teachers, against the misuse of the provisions are seldom pursued owing to the fear of further punishment or exclusion from education and, where pursued, were seldom successful.

55. According to the information received, teachers routinely employed corporal punishment in schools for a number of actions not permitting the imposition of corporal punishment under the Education (School Discipline) Regulations 1972, such as the occasional academic under-performance of a student or the whole class, or minor disciplinary issues. Furthermore, teachers often use violence going beyond the Regulations by either inflicting a greater number of strokes, by using implements not authorized by the Regulations such as bamboo or wooden sticks or rubber whips, or by subjecting the child to additional slaps, blows or kicks. The effects on pupils range from cuts and bruises to psychological damage and severe injuries, such as broken bones, internal bleeding, knocked-out teeth and the exacerbation of pre-existing illnesses. In some cases reported, the imposition of corporal punishment ended in the death of the child (see annex).

56. The Special Rapporteur has stated in the past that "corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment".[12] He notes the General Comment of the Human Rights Committee that "the prohibition must extend to corporal punishment, including excessive chastisement ordered as a punishment for a crime or as an educational or disciplinary measure".[13] Given that such punishment is provided for in subordinate legislation, thereby engaging the responsibility of the State, and given the manifestly excessive resort to and application of such punishment in Kenyan schools, the Special Rapporteur has no hesitation in calling for the immediate repeal of the relevant rules and for the diligent prosecution of school personnel for assault or, as the case may be, battery in the kinds of incidents described.

II. THE PROTECTION OF DETAINEES AGAINST TORTURE

A. Legal issues

57. On 21 February 1997, Kenya ratified the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 74 of the Constitution provides that "no person shall be subject to torture or to inhuman or degrading punishment or other

treatment". However, there exists no explicit provision concerning torture in either the Penal Code or the Code of Criminal Procedure. Nevertheless, in November 1997, Section 14 (A) (2) and (3) of the Police Act was amended as follows: "(2) No police officer shall subject any person to torture or to any other cruel, inhuman or degrading treatment. (3) Any police office who contravenes the provisions of this section shall be guilty of a felony". According to the Attorney-General, provisions of chapter V of the Constitution, "Protection of fundamental rights and freedoms of the individual", should be more defined to be in line with international instruments. He noted that it was one of the main tasks assigned to the Constitution of Kenya Review Commission.

58. It must be noted that article 84 (1) provides that if a person alleges that any of the provisions of sections 70 to 83, which guarantee fundamental rights and freedoms of the individual, "has been, is being or likely to be contravened in relation to him (or, in the case of a person who is detained, if another person alleges a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress". Paragraph 2 of the same article provides that the High Court "may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 70 to 83". Finally, paragraph 5 of the same article provides that the Parliament: "(b) shall make provision (i) for the rendering of financial assistance to any indigent citizen of Kenya where his right under this Chapter has been infringed or with a view to enabling him to engage the services of an advocate to prosecute his claim". According to the information received, the High Court has however decided that it has no jurisdiction to enforce the human rights provisions in Chapter V of the Constitution.[14]

59. According to information received from non-governmental sources and gathered by the Special Rapporteur during his visits to police lock-ups, individuals are frequently detained for extended periods without being brought before a magistrate despite the fact that article 72 (3) of the Constitution provides that "[a] person who is arrested or detained ... and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within 24 hours of his arrest or from the commencement of his detention, or within 14 days of his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or is about to commit an offence punishable by death the burden of proving that the persons arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with." Treason, administration of unlawful oaths to commit capital offences, murder and robbery with violence or attempted robbery with violence are capital offences.[15] Most persons detained on suspicion of robbery met by the Special Rapporteur were registered as being suspected of robbery with violence, which therefore legally allowed the police to hold them for up to 14 days. As justified by some police officers, solely the investigation could conclude whether the robbery had been perpetrated with violence or not. The definition of robbery with violence is the following: "If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes, or uses any other personal violence to any persons, he shall be sentenced to death." A large number of cases appeared to the Special Rapporteur to have been classified by the police as being in the category of "robbery with violence" solely in order to be legally in a position to

detain the concerned persons for more than the normal 24-hour period. According to NGOs and testimonies received by the Special Rapporteur, it is during this initial period of detention that individuals are at risk of being subjected to torture and other forms of ill-treatment. Moreover, according to numerous testimonies received by the Special Rapporteur, persons are detained solely on the basis of denunciation of a member of the public. The Special Rapporteur also received information according to which mass arrests often take place at the end of the month when people have received their salary. It is alleged that these arrests are carried out in order to extract bribes.

60. According to several non-governmental interlocutors, especially lawyers, article 72 (3) of the Constitution is too vague: the term "as is practically reasonable" constitutes a loophole which the police are reported to use regularly to delay production of the person in court. In this regard, NGOs and detainees met by the Special Rapporteur claimed that individuals were frequently either detained late on a Friday and held over the weekend before being brought before a magistrate or transferred from one police lock-up to another, being technically released and then re-detained for a further 24-hour period. The Attorney-General indicated that, in a landmark statement, the Chief Justice had declared that courts may sit on Saturdays in order to fulfil the 24-hour requirement. A system of magistrates on duty during weekends has also reportedly been put in place. However, NGOs have claimed that in most instances these magistrates are difficult to contact. Furthermore, it must be noted that police officers interviewed by the Special Rapporteur indicated that, according to their knowledge, weekends and holidays do not count in the 24-hour or 14-day period. But, according to the Chief Justice, if a person has been held for close to 14 days, most senior magistrates will automatically ask for an inquiry, considering the length of time spent in police custody. However, this was reported by NGOs and lawyers rarely to be the case. Finally, it must be noted that habeas corpus actions, which may be invoked to ensure that a detainee is brought to court, are said to be costly and only open to the very few who can afford a lawyer.

61. Similarly, the attention of the Special Rapporteur was also drawn by NGOs to the vagueness of article 36 of the Criminal Procedure Code which provides that "[w]hen a person has been taken into custody without a warrant for an offence other than murder or treason, the officer in charge of the police station to which the person has been brought may in any case and shall, if it does not appear practicable to bring that person before an appropriate subordinate court within 24 hours after he has been so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties ... but where a person is retained in custody he shall be brought before a subordinate court as soon as practicable". According to information received by the Special Rapporteur, bonds were executed in very few instances. In the judgement of the Special Rapporteur, quite a number of persons he met in police lock-ups could have benefited from such bonds. It was also alleged that bail was opposed by prosecutors on the basis that investigations had not been completed.

62. Article 26 of the Evidence Act provides that "[a] confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible in a criminal proceeding if the making of the confession or admission appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person ...". It has been argued that this provision is subsequently weakened by article 31 of the

same Act, which provides that "[n]otwithstanding the provisions of section[s] 26 ... when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved". The Chief Justice nevertheless emphasized that the term "may" gave to magistrates a discretionary power regarding the admission of information obtained in a vitiated way. Furthermore, he indicated that in the case of "suspect evidence", prosecutors should not go to court, but ask for further information, since they know that the court will not rely on a coerced statement or on information obtained through a coerced confession. He expressed the opinion that Kenyan magistrates were particularly careful in checking the circumstances in which a confession was obtained and whether suspects had been well treated while in police custody.

63. According to non-governmental sources, suspects are often convicted following the use of confessions extracted under torture. In practice, those whose convictions are based on confessions extracted under torture have no or little judicial recourse to have their sentences quashed, despite both constitutional and legal prohibitions on the use of torture in any circumstance. Medical evidence is also said by non-governmental sources often not to be called for in judicial proceedings. Most suspects are not represented by a lawyer and therefore do not complain about the treatment they have been subjected to owing to a lack of knowledge of the procedures available to complain.

64. According to the Attorney-General, confessions do not need to be corroborated by further evidence in order to be relied upon in court. Several interlocutors drew the Special Rapporteur's attention to the possibility of amending article 28 of the Evidence Act[16] in order to restrict this provision to confessions made in the presence of a magistrate. As pointed out by the Chief Justice, such an amendment would require a considerable increase in the number of magistrates. For the time being, article 28 (a) was said by the Chief Justice not to be resorted to.

B. Access to detainees

65. Lawyers also complain that they are frequently denied access to their clients detained either in pre-trial detention centres or in prisons, even when they are in possession of a court order. There is no clear provision in the law, but NGOs, as well as the Attorney-General, recognized that, partly based on chapter V of the Constitution, lawyers have a legal right to immediate and unhindered access to their clients at any time. The police and prison officials are said to blatantly ignore this guarantee. For example, the journalist Tony Gachoka who was held at Kamiti Maximum Security Prison was reportedly denied access to a lawyer for at least two weeks prior to the Special Rapporteur's attempt to visit this prison (29 September) and held in solitary confinement for a substantial period of time. Detainees are also reportedly not informed of their rights to have a lawyer. This was confirmed by interviews held by the Special Rapporteur with detainees in police lock-ups and with defence lawyers. Several non-governmental sources expressed their concern about the lack of legal aid, since it is believed that only 10 per cent of common criminals are represented by a lawyer, and even fewer in rural areas. Few NGOs are said to be working in this field and the Bar Association of Kenya does not yet provide such legal assistance. Only persons suspected of having committed capital offences receive such legal aid.

66. Doctors met by the Special Rapporteur pointed out that since they had no explicitly guaranteed legal right to have access to persons detained in police lock-ups, it was very rare that they were permitted to have access to such detainees. Remand detainees technically have the right to see a doctor of their choice, but magistrates are said to invariably order examinations by a government doctor. Private doctors confirmed that it was almost impossible for them to have access to prisoners without a court order, which was reportedly rarely obtained. Private doctors indicated that even when they possessed such legal authorization, the consent of the prison doctor was still needed. In such cases, subsequent consultations with their client are carried out in the presence of the prison doctor and are no longer confidential.

C. Complaints procedures

67. According to non-governmental sources, a large number of cases of torture and other forms of ill-treatment are not reported to the judiciary because alleged victims or their relatives are either too ignorant of the law to request an investigation and to lodge a complaint, or are afraid of being subjected to reprisals if they do complain. Indeed, numerous cases of harassment have been reported and human rights defenders are said to have also been targeted. According to NGOs, their monitoring network, especially in remote areas, is still embryonic and their reports do not therefore cover the phenomenon of torture with accuracy. Furthermore, they also claim that a large number of alleged victims are not willing to have their names made public for fear of reprisals. Most cases are thus said to go unreported.

68. Another obstacle to torture victims complaining is the absence of an independent body in charge of investigating alleged cases of torture by law enforcement officials. Alleged victims are thus supposed to go to the very same police station where they have been detained and ill-treated to lodge their complaint. According to numerous testimonies given to the Special Rapporteur (see annex), it was therefore impossible for the alleged victims to file a complaint. Several NGOs have called for the creation of an independent body in charge of investigating violations by law enforcement officials, a need which was also recognized by the Attorney-General and the Head of the Civil Service.

69. The Commissioner of Police indicated to the Special Rapporteur that the Police Standing Orders set clear rules for addressing complaints, which must be promptly and thoroughly investigated. Those investigations must always be carried out by a police officer above the rank of inspector, which, in his opinion, guaranteed a certain degree of impartiality. When the Special Rapporteur questioned the cooperation of police officers belonging to the same police station as those allegedly responsible for ill-treatment, the Commissioner indicated that it was always possible to address such a request to a more senior police officer, i.e., to the officer-in-charge of the police station, or even the Officer in Charge of a Police District or to the District or Provincial Commissioner. He also pointed out the existence of a complaints department in his own office which could forward the relevant cases to the Office of the Attorney-General. He indicated that all complaints were taken very seriously by all his subordinates. Therefore, he expressed the view that this hierarchical system prevented any covering up of cases.

70. Furthermore, the Commissioner of Police explained that investigations regarding criminal complaints are carried out by CID inspectors under the responsibility of the officer-in-charge of a police station (OCS). The file with the findings and recommendations is

given to the OCS who must check the quality of the investigation and who takes a decision regarding actions to be taken or who asks the Attorney-General to give guidance in questionable cases. Therefore, the OCS is the guarantor that investigations are properly conducted in accordance with the constitutional provisions prohibiting torture. In his opinion, the fact that CID inspectors know that the way they have conducted their investigations will be subject to scrutiny by their superior prevent them from abusing their power. Similarly, when police inspectors are investigating torture complaints, they are prevented from covering up cases because of the same hierarchical scrutiny. All NGOs emphasized the need for the police to receive training with respect to human rights. Accordingly, the Attorney-General indicated his intention to issue a manual aimed at training police officers.

71. The Commissioner of Police also indicated that complainants had to be notified of the actions taken. According to NGOs and testimonies received by the Special Rapporteur, a large number of alleged victims complain that they are not informed of the measures taken, if any, following their lodging of a complaint. According to the Commissioner of Police, all unnatural deaths, including deaths in police custody, had to be reported to a magistrate, who would automatically initiate an inquest. The Commissioner therefore believed that it was impossible for the police to cover up a case of death in custody. If clear evidence existed, then charges would be brought against the officers responsible; if there existed no prima facie evidence, then the court would decide. Questioned by the Special Rapporteur on several individual cases of death in police custody, in particular involving the "flying squad", the Commissioner refused to respond, arguing that he did not know the state of play of these cases and was not authorized to give that kind of information to an external person. In his view, the number of cases reported in the media had, however been exaggerated.

72. Similarly the Chief Justice explained to the Special Rapporteur that he believed that the high number of torture complaints was partly due to the fact that defendants making confessions which would lead the court to sentence them to life imprisonment were willing to use allegations of torture as a defence. He emphasized that although a lot of defendants claimed that they had been tortured, few cases were proved to be true. The Attorney-General also indicated that fictitious complaints were also brought against the police in order to receive financial compensation from the State. Therefore, he indicated that these complaints had to be considered with caution in order to avoid abuse. At the same time, he stressed that when he was informed, even through the media, of credible cases of alleged torture or ill-treatment he always ordered an inquiry. According to non-governmental sources, the Office of the Attorney-General has a tendency to respond to all complaints from NGOs, informing them that their complaint has been received and that an inquiry has been opened. NGOs complained, however, that they were not receiving any follow-up information on what measures had been taken.

73. The "Medical Examination Report", known as the P3 form, has to be filled out by the police officer requesting the examination and the medical officer or practitioner carrying out the examination. It contains information regarding the alleged victim's identity and the circumstances in which the torture is supposed to have taken place, as well as a description by the medical practitioner of the injuries sustained as a result of the alleged ill-treatment. In this respect, according to non-governmental sources, the fact that medical doctors often use the all-encompassing term "soft tissue injury" (STI) to qualify any kind of injury poses a serious problem when such a certificate is produced in court. This form must be submitted to the police

by complainants, their relatives or lawyers. It is alleged by NGOs and alleged victims that it is often "lost" or not produced in court. Furthermore, in the absence of legal representation of the victims, doctors are seldom notified of impending court proceedings and hence cannot produce the document in court in cases where the original P3 form was not submitted by the police. It is also alleged that doctors are frequently harassed or threatened by police or civil servants to make them falsify their reports.

74. The request for the issuing of a P3 form is made to the police, who are said to frequently refuse to issue the patient or even the doctor with a P3 form and therefore to hinder the bringing of a case through the resulting lack of evidence. According to NGOs, only the P3 form is accepted as evidence by most magistrates, while there is no legal provision which prevents victims from presenting in court a certificate issued by a private doctor. The Attorney-General confirmed that alleged victims could be examined by a private doctor and could submit the subsequent medical certificate in court. He recognized that there may sometimes exist problems for alleged victims in obtaining P3 forms and thus there was a need to enact guidelines to ensure that police officers provided them with P3 forms. The Special Rapporteur drew his attention to the suggestion made by several NGOs that these P3 forms should be made available in places other than police stations. The Commissioner of Police nevertheless clearly stated that they were police documents that should remain with the police and not be given to civilians. Police officers were indeed supposed to facilitate the examination of victims by a doctor, in which case the P3 form would have to be kept in police files as an exhibit to be presented in court.

75. NGOs allege that government-appointed doctors frequently conspire with police and prosecutors and falsify medical reports. Similarly it is alleged that post-mortem reports are also falsified. It must nevertheless be noted that private doctors who are members of the Kenyan Medical Association (KMA) may be subjected to disciplinary action if found to have violated medical ethics. For the time being, no doctor has been subjected to such disciplinary action. A Human Rights Committee within the KMA was created in April 1998 with the objective of educating doctors in the field of human rights. One of the Committee's main concerns is the harassment to which doctors are said to be subjected to in order to produce a non-accusatory medical certificate for the police.

76. According to NGOs, magistrates often reject medical reports, including P3 forms, in court. It was also reported that alleged victims who had appeared in court and had been visibly unwell, had not been provided with medical treatment under a magistrate's order. From time to time, magistrates were nevertheless said to order detainees to be taken to a hospital for medical treatment. These orders are said not to be always carried out subsequently by police officers or prison guards. On the other hand, the Chief Justice indicated that Kenyan magistrates were very scrupulous regarding not only the suspects' state of health, but also the circumstances surrounding the making of a confession and possessed an inherent power to order the opening of an inquiry when a defendant appeared unfit. He also emphasized that if the issue of ill-treatment had not been raised at the first court appearance, the complainant was not prohibited from raising it at a later stage during the course of proceedings.

77. According to non-governmental sources, one of the main obstacles to reducing the incidence of torture lay in the difficulties in seeking redress, namely the denial of P3 forms to document injuries, the belief among the public that the examination for the purpose of completing a P3 form needed to be carried out by a government doctor, and delayed and half-hearted investigations by police officers of their colleagues.

D. Impunity

78. In December 1998, the Minister of State responsible for Internal Security, Major Marsden Madoka is reported to have told Kenyans to "forget" about the widespread acts of torture committed by the country's security forces.[17] According to the information received from non-governmental sources, torture complaints are rarely fully and impartially investigated, if at all, and law enforcement officials suspected of having committed acts of torture are rarely suspended. Again, it must be emphasized that, as there exists no independent body to investigate complaints of torture, investigations go back to officers belonging to the same unit as those who are suspected of having committed acts of torture. Thus, the Minister for Internal Affairs recognized the possibility for police officers investigating their colleagues' actions to cover up such acts. Nevertheless, according to the Attorney-General, more than 60 law enforcement officials were currently being prosecuted for torture at the time of the Special Rapporteur's visit. The latter indicated his interest in receiving information concerning the outcome of these cases. According to statistics for the years 1998-1999 received from the Attorney-General by letter dated 29 October 1999, 134 criminal proceedings against law enforcement officials were pending before the court, 2 were under investigation, 8 pending arrests and 63 were finalized, of which 103 were offences against the person. (The following offences are taken into account: murder, manslaughter, rape, assault, unlawful wounding, grievous harm, defilement, indecent assault, unnatural offence and attempted murder.) The Special Rapporteur also received information according to which the very few cases of torture brought to court are the object of civil proceedings only. No criminal proceedings against law enforcement officials appear to be instituted in these cases, as lawyers believe that such proceedings would remain unsuccessful. Finally, the Special Rapporteur was informed by NGOs that there seems to be a tendency to transfer police officers suspected of involvement in torture cases to the North-East Province as a "disciplinary" measure which may explain a high rate of torture allegations in this province.

79. Based upon case law, magistrates should hold "a trial within a trial" when a defendant claims that he or she has been tortured. The Attorney-General confirmed that such situations occurred frequently. Lawyers and NGOs claimed, however, that this was rarely done and only in cases where the defendant's lawyer insisted. In their view, magistrates should play a more active role in investigating cases of defendants appearing in court bearing signs of torture or ill-treatment. They nevertheless recognize that magistrates are overworked and do not always have the time to carefully check the state of health of defendants. Furthermore, it must be noted that, according to NGOs, "the emphasis of such 'trial' is then on establishing whether a confession or statement was obtained under duress and therefore cannot be used as evidence in court, with the prosecuting counsel arguing in favour of admitting the evidence and denying any allegations of police brutality".[18] While, as stated by the Chief Justice, from a legal point of view the burden of proof in such a "trial" rests on the prosecution, it seems that in practice the defence must demonstrate that the evidence was not given freely and fairly. Finally, NGOs emphasized that in any case such a "trial" does not constitute an impartial investigation into

allegations of torture by an investigating body able to demonstrate its formal independence from the detaining and interrogating authority and should not therefore be a substitute for a proper and distinct investigation into the allegations of torture.

80. The Attorney-General pointed out that police officers who were charged with a criminal offence were suspended from duty. Police officers under investigation, however, continued to serve while the inquiry was pending. According to NGOs, there had only ever been three civil claims initiated against police officers suspected of torture, of which two were successful, although compensation reportedly still remained to be paid.

E. Standing Committee on Human Rights

81. The Standing Committee on Human Rights was established in May 1996 under executive authority. The Committee's terms of reference include investigating alleged human rights violations, with the exception of all matters pending before the courts, and educating the public on human rights issues. The latter function is regarded as paramount, given the lack of awareness among the public and law enforcement officials. The Committee has also been mandated to advise the Government on measures to be taken in order to ensure better protection of human rights, as enshrined in the Constitution of Kenya and in international instruments to which Kenya is party. Finally, the Committee must visit any jail or any other institution under the control of the Government where persons are detained and study the conditions of detention in order to make recommendations for the better treatment of the detainees. At the time of the Special Rapporteur's visit, the Committee had received 418 complaints, of which 104 had been investigated. After having completed an inquiry into a complaint, the Committee can inter alia prosecute the person suspected of having violated human rights, or recommend to the petitioner and to the government or other public body concerned some other method to settle the complaint or to obtain relief.[19] The Committee has issued six confidential reports for the President. In December 1998, it issued its first public report, a general overview of human rights laws and definitions, with only cursory reference to human rights abuses.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

82. The Special Rapporteur wishes to express his thanks to the Government of Kenya for its invitation to him to visit the country and the facilities it granted him to ensure the effective conduct of the mission, including interviews with the Head of State, ministers and senior officials. He was particularly grateful to the Attorney-General, Mr. Amos Wako, for his good offices in arranging many of the meetings. By and large, these complied with the standard terms of reference for such missions, especially as regards, after one interrupted visit, access to police stations. The failure to grant him access to Kamiti Prison in Nairobi, the largest and most important prison in the country, remains a matter of concern. However, he does not believe that this omission prevented him from obtaining a reasonably clear picture as to the extent of problems within his mandate.

83. Kenya occupies an important political and economic role, not only in the East African region, but also at a continental level. It emerged from a period of one-party rule by KANU in

the early 1990s, with KANU retaining the presidency and dominance of Parliament in elections held in 1992 and 1997. However, politics are endemically influenced by ethnic factors and charges of corruption in the economy, the body politic and even the administration of justice are rife. Indeed, in the wake of the International Monetary Fund's suspension of loans on the grounds of corruption, the present Government recently appointed a team, under the leadership of Dr. Richard Leakey, the internationally known former head of the Kenya Wildlife Service and now Cabinet Secretary and Head of the Civil Service, with wide powers to root out governmental corruption.

84. The northern part of the country presents special problems. The area is desert or semi-desert, flanked by the Sudan to the west, Ethiopia to the north and Somalia to the east. There is much transfrontier movement of people who often share ethnic backgrounds and may not speak Swahili, the predominant local language in Kenya. The disorder and violence in the neighbouring countries thus spills over into Kenya, making attempts to maintain public order in such a harsh physical environment a daunting challenge.

85. Inevitably, this state of affairs has had its impact on the ability of the institutions of law enforcement to comply scrupulously with the rule of law. That law itself lends itself to abuse, including abuse within the Special Rapporteur's mandate. Thus, in respect of any capital crime, which term includes the common crime of robbery with violence, the police are entitled to hold a suspect for up to 14 days, as compared with 24 hours for other crimes. Moreover, the Special Rapporteur encountered numerous cases confirming allegations he had received before and during the mission that the time limits may not be respected in practice. The situation is exacerbated by the virtual unavailability of legal aid for the overwhelming majority of suspects held by the police, because most suspects cannot afford legal assistance and only those charged with capital offences are entitled to legal aid. This is particularly unfortunate in the light of a disposition by the police to presume that an allegation by a member of the public against a suspect is sufficient evidence to detain the suspect. In addition, not only are the police responsible for the forensic investigation of complaints against the police, they also sometimes refuse to make available the P3 form required for medical documentation of a complainant's physical state.

86. A number of the Special Rapporteur's official interlocutors acknowledged that there was a tradition in Kenya of physically rough treatment of suspects by the police. It was apparent to the Special Rapporteur that such treatment routinely includes sustained beatings on all parts of the body with sticks, metal bars and lengths of rubber, leaving unmistakable signs of their use. The purpose of such beatings, which can only occasion intense pain and suffering, is generally to obtain information or confessions. Sometimes, it also appears to be a method of carrying out extrajudicial punishment. In the light of this, the practice, which is evidently widespread and systematic[20] must be considered as falling within the definition of torture contained in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

87. The Special Rapporteur is disposed to believe that ministers and senior officials, including some at the most senior levels of the police force, may not be fully aware of the reality of the problem. However, in the light of information repeatedly conveyed to the authorities by the Special Rapporteur himself and by international and local NGOs, the lack of such awareness

may well reflect an unwillingness to look too closely at the problem. This is because of an absence of effective monitoring procedures and is perhaps also attributable to a sense that it might be imprudent to look too closely. The result, however, is a general sense of impunity among those, notably members of the CID, charged with investigating suspected criminal activities.

88. Some encouraging aspects are to be noted. First, the record-keeping in police stations appears generally conscientious. Indeed, it is such as to permit any diligent monitoring body to assess whether or not someone is detained at variance with the requirements of the law and to trace the movements of detained persons. Second, the Special Branch, which dealt with political and public order cases and whose propensity to employ the most gruesome methods of torture was notorious, has been disbanded. Third, a free and assertive press now speaks openly about human rights issues, including those relating to the treatment of persons deprived of their liberty. Fourth, the Standing Human Rights Committee has indicated a commitment to addressing such problems.

89. As far as the prison system is concerned, it is clear that it is run, at the highest level, on authoritarian and arbitrary lines sustained by its impermeability to external scrutiny. The difficulty lawyers have in securing access to their clients, often having to serve court orders for the purpose, is evidence of this, as is the relocation of substantial numbers of prisoners in anticipation of the Special Rapporteur's visit and the holding of journalist Tony Gachoka in solitary confinement, as well as restrictions placed on his access to a lawyer. Clearly, the prison system faces problems of extreme overcrowding and inadequate resources, making life for detainees positively harsh, well beyond that inherent in deprivation of liberty. Its personnel are underpaid, undertrained and sometimes housed in conditions calculated to erode any sympathy they may have for those in their charge.

90. It is to the credit of the leadership that, despite the fact that the law provides for the possibility of corporal punishment for serious disciplinary offences, no such punishment has been carried out in recent years.

91. Staff are required, however, to carry out judicially ordered corporal punishment as a criminal sanction. No statistics were provided to the Special Rapporteur on the incidence of recourse to such punishment, which the Special Rapporteur considers to be inhuman and degrading.

B. Recommendations

92. Accordingly, the Special Rapporteur makes the following recommendations:

(a) The Government should ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body capable of prosecuting perpetrators;

(b) The police, at a level at least as senior as Assistant-Commissioner, should systematically make thorough, unannounced visits to police stations to verify the legality of the detention of all persons held, as well as their treatment and conditions of detention. Disciplinary and, as appropriate, criminal charges should be preferred in respect of any abuses;

(c) A body such as the Standing Committee on Human Rights should be endowed with the authority and resources to inspect at will, as necessary and without notice, any place of deprivation of liberty, whether officially recognized or suspected, to publicize its findings regularly and to submit evidence of criminal behaviour to the relevant prosecutorial body and the administrative superiors of the public authority whose acts are in question; reputable non-governmental organizations could be associated with these functions;

(d) In line with guidelines 15 and 16 of the United Nations Guidelines on the Role of Prosecutors,[21] the Attorney-General's Chambers should pay particular attention to the diligent prosecution of cases of torture and similar ill-treatment by law enforcement officials and take appropriate action when they come across information suggesting that evidence has been obtained by such methods;

(e) Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate compensation should be paid promptly; a system should be put in place to this end;

(f) The period of police detention in capital cases (14 days) should be brought into line with the normal 24-hour period applicable to persons suspected of other crimes;

(g) Confessions made by a person under police detention without the presence of a lawyer should not be admissible against the person;

(h) Legal aid should be available to anyone held in police custody or on remand who has not the means to secure legal assistance, with lawyers being given immediate access to their clients. The Law Society should consider establishing an appropriate scheme in cooperation with the Government;

(i) Close family members of persons detained should be immediately informed of their relative's detention and be given access to them;

(j) The police monopoly of issuing P3 forms for medical examinations should be abandoned;

(k) Magistrates and judges, like prosecutors, should always ask a person brought from police custody how they have been treated and be particularly attentive to their condition;

(l) The system for appointment of the judiciary should be reviewed with a view to ensuring genuine independence of the judiciary. The Government is urged to consider inviting the Special Rapporteur on the independence of judges and lawyers to visit the country;

(m) A general opening up of the prison system is required, in a way that would welcome rather than deter access by civil society. In particular, impediments to access by lawyers, doctors and family members should be removed. Civil society should be brought in as partners to help humanize an under-resourced and overpopulated system. Once this happens, the international community should also be willing to lend assistance, for example, by helping provide education and vocational training;

(n) The judiciary should be more diligent in visiting and inspecting prisons and more circumspect in its readiness to remand suspects or sentence offenders to deprivation of liberty. This applies particularly in respect of non-violent, first-time, suspected offenders and juveniles;

(o) Corporal punishment as a criminal penalty should be abolished at once. The same applies, despite its obsolescence, to corporal punishment for prison disciplinary offences;

(p) The Government is invited to consider favourably making the declaration contemplated in article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, whereby the Committee against Torture could receive individual complaints from persons alleging non-compliance with the terms of the Convention. It is also invited similarly to consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights so that the Human Rights Committee could receive individual complaints;

(q) The United Nations Voluntary Fund for Victims of Torture is invited to consider sympathetically requests for assistance by non-governmental organizations working for the medical needs of persons who have been tortured and for the legal redress of their grievances.

Notes

[1] Amnesty International, 1998 Annual Report.

[2] See Human Rights Watch, "Juvenile injustice" (1997).

[3] Kenya Human Rights Commission, Quarterly/Human Rights, vol. 1, No. 2 (April-June 1999); p. 1.

[4] See Amnesty International, "Kenya: political violence spiral" (AFR 32/19/98).

[5] According to the Commissioner of Police, all cells are regularly visited by the police district officer and annually by the divisional officer.

[6] Kenyan Prison Rules, Rule 24 (1).

[7] Article 51 (3) of the Prison Act (1967) provides that "any prisoner found after due inquiry ... to be guilty of an aggravated prison offence" by a senior or an administrative officer may be punished inter alia by "(a) corporal punishment with a cane not exceeding such amount as may be prescribed". Articles 54 (medical check-up) and 55 (number of strokes) address the conditions in which corporal punishment in prisons can be carried out. Article 55 (2) provides

for the confirmation of the sentence by a Commissioner who may increase, reduce or substitute the punishment by any other punishment or punishments which he is authorized to award. Article 55 (5) states that corporal punishment is not to be inflicted upon female prisoners, civil prisoners and prisoners under sentence of death.

[8] According to Amnesty International, the last executions, which were not officially announced, took place in 1986 (see Annual Report for 1986).

[9] According to Amnesty International, at the end of 1996 the prison population was of 41,000 prisoners (1997 Annual Report).

[10] The Penal Code (1970) enumerates a number of offences for which corporal punishment can be ordered in addition to imprisonment, such as rape (art. 140), indecent assault on a woman (art. 144 (1)), for a male person to live on the earnings of prostitution or soliciting (art. 153), "indecent practices between males" (art. 165), assault occasioning actual bodily harm (art. 251) and killing an animal with intent to steal (art. 289). The Penal Code further requires the imposition of corporal punishment in the case of the following offences: stealing of a motor vehicle (art. 278 A), stealing from the person, in a dwelling house, etc. (art. 279), robbery (art. 296 (1)), attempted robbery (art. 297 (1)), burglary (art. 304 (2)) and armed preparation for felony (art. 308 (1)).

[11] For a discussion on the issue of corporal punishment, see: E/CN.4/1997/7; paras 9-11.

[12] E/CN.4/1997/7, para. 6.

[13] Human Rights Committee, General Comment 20, HRI/GEN/1/Rev.2, para. 5.

[14] Amnesty International, "Kenya - violation of human rights - communications between Amnesty International and the Government of Kenya" (AFR 32/27/97), p. 9.

[15] Respectively, sections 40, 60, 220 and 296 (2) of the Penal Code.

[16] Article 28 of the Evidence Act reads as follows:

> "No confession made by any persons whilst he is in the custody of a police officer shall be proved as against such persons, unless it be made in the immediate presence of -
>
> (a) a magistrate; or
>
> (b) a police officer of or above the rank of, or a rank equivalent to, inspector."

[17] See Amnesty International press release AFR 32/32/98, 4 December 1998.

[18] Amnesty International, "Kenya - violations of human rights - communications between Amnesty International and the Government of Kenya" (AFR 32/27/97), p. 12.

[19] Standing Committee on Human Rights Bill (1998), para. 18.

[20] As far as the term "systematic" is concerned, the Special Rapporteur is guided by the definition used by the Committee against Torture: "The Committee considers that torture is practised systematically when it is apparent that torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice." (A/48/44/Add.1, para. 39)

[21]

> "15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.
>
> "16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."

Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Annex

SUMMARY OF ALLEGATIONS*

1. **Luka Wafula**, a 66-year-old former teacher and provincial chief, was reportedly asked by three police officers, one from the administrative police, one from the national police and one from the Special Branch, on 21 July 1992 to go to Bungoma to meet with the District Commissioner. The latter is said to have ordered him to go to the office of the Head of the Special Branch. As he entered, around 9.30 p.m., he was reportedly slapped on the face, ordered to sit on the floor and to say everything he had on his mind. Half an hour later, he was taken to a small office where a statement about his personal life was recorded. According to him, he was suspected of involvement with FERA and of having smuggled arms into the country. He was allegedly beaten on his private parts several times by six members of the Special Branch. He was then reportedly detained for seven days. He was allegedly stripped naked, pushed into a cell and left there without food. On the seventh day, he learnt that his brother had been shot dead by the police and he was reportedly allowed to attend the funeral. He is said to have then stayed at home after a brief stay in Uganda and to have repeatedly reported to the police station, where he was told to return home. He was reportedly arrested and interrogated on several occasions: in March 1993 at Bungoma, Webuye and Kakamega police stations, and in May 1993 at Kakmenga police station. On 15 March 1995, he was reportedly arrested and taken to Bungoma police station, where he stayed for two days. Then he was reportedly transferred to Nandi Hills police station. At night, he was blindfolded and taken to an unknown location where he was allegedly beaten for two days. He was interrogated by men in suits who allegedly exercised pressure on his back, the soles of his feet and his ankles. He was also reportedly kicked on the chest. He reportedly did not reply to the questions asked him. According to the information received, he was then given painkillers. Seven days later, he was allegedly subjected to the same kind of treatment and interrogated again about his alleged involvement with the February the Eighteenth Resistance Army (FERA) and his leader, for four days. His private parts are said to have been tied to an electric wire and he was allegedly forced to enter a room in which there was a big snake. He was reportedly given hot water to heal his swollen legs. He believes that he was held in Navasha Maximum Security Prison and to have been detained there for 42 days. He was then reportedly taken to Kakamenga police station, where a statement is said to have been recorded. He was reportedly charged with breaking into a police station, rape, abduction of children, military involvement with FERA and treason. He is said to have denied all these charges in court. He was put on remand in prison for three months and released on 18 August 1995.

2. **Truphena Obwaka Shirako**, a 51-year-old woman was reportedly arrested in January 1994, accused of stealing from her employer. According to the information received, she was taken to the Langas police station in Uasin Gishu. At the police station, four police officers allegedly inserted a bottle into her vagina. One of the policemen also allegedly inserted his hand into her vagina, apparently saying he was looking for the money. She was later reportedly beaten for five hours. The officers involved were apparently charged with assault and causing bodily harm, but all were reportedly released on bond.

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* For ease of reference, the following summaries are presented in a chronological order.

3. **Joseph Barsabas Wekesa**, on behalf of whom the Special Rapporteur sent a communication to the Government in 1996 (see E/CN.4/1997/7/Add.1, para. 293) was reportedly arrested on 4 February 1995 at around 10 p.m. by several persons, including an assistant chief. He was reportedly taken from his compound and was allegedly slapped by a plain clothes policeman. Handcuffed and blindfolded, he was reportedly put in the trunk of a van and was taken to Sirisia police station, where he was detained in a cell infested with mosquitoes. The following day, he was reportedly transferred to Kimilili police station and then to Webuye and Kakamenga police stations. The same night, he was reportedly again transferred, blindfolded, to an unknown location. The following morning, he was interrogated about the February Eighteenth Movement (FEM) and was allegedly severely beaten. A wooden stick is said to have been inserted in the upper part of his back. At the time of the interview (25 September 1999), a mark consistent with this allegation was still visible. He was allegedly tortured for the next 12 days. He was allegedly beaten on all parts of his body, including his private parts and toes, and an electric wire was applied to his hips. Wax from a candle is said to have been dropped on him. He was constantly interrogated while being beaten about the FEM's objectives. On 19 February, he was reportedly blindfolded and taken to Nairobi. He believes he was held in Niati House by the Special Branch. On 22 February, he was reportedly taken to the Nairobi High Court, where, because of the threats he had received while in detention at Niati House, he reportedly did not complain about the ill-treatment he had allegedly been subjected to and agreed to knowing about the FEM. On that basis, he was reportedly sentenced to six years in prison. He was reportedly immediately transferred to Kumiti Maximum Security Prison. The following day, his lawyers are said to have filed a complaint with the High Court. The High Court reportedly ordered a medical examination. He reportedly received medical treatment for the next five months. On 21 December, his case was reportedly referred to the Attorney-General and, on 4 January 1996, to the Chief Justice. On 28 January, his sentence was reportedly reduced to two years' imprisonment and on 21 June 1996 he was reportedly released.

4. **Alex Mwangangi Kimongo**, an army officer based at the Nanyuki barracks was reportedly arrested on 17 June 1995 on suspicion that he had participated in a violent robbery of firearms. During the ensuing investigations, he was allegedly tortured by police, which caused him to lose one of his testicles. The robbery case against him reportedly commenced on 25 February 1997 and he was sentenced to death on 4 June 1997.

5. **Hitler Wepukhulu** was reportedly arrested on 30 July 1995 at his home in Lwakaka in Bungoma district. According to the information received, he was bundled into a car, blindfolded and taken to several police stations before finally arriving at Nyati House. There, he was reportedly kept in a cell by himself for three days without anyone coming to see him. He reportedly did not have any food, access to toilet facilities nor a bath for those three days. On the fourth day after his arrest he was reportedly taken out of the cell and given some food. Thereafter he was reportedly taken to a room with about 12 men in it and after being forced to strip naked was made to sit in the middle of the room. He was reportedly subsequently interrogated by police about whether he had any guns in his possession and when he reportedly denied having any guns, he was allegedly simultaneously beaten by five police officers. According to the information received, the alleged beatings were with whips and broken pieces of wood. The beatings reportedly continued each day for two weeks. By the end of the two weeks, he reportedly could not walk as a result. The police officers also allegedly threatened to

shoot him and made him sit on an imaginary chair. According to the information received, he was placed in solitary confinement for the next 82 days before allegedly being forced to sign a confession before he was released.

6. **Mary Wangui**, a woman who was pregnant at the time, was reportedly arrested on 10 October 1995 and taken to the Buru-Buru police station. At the station, she was allegedly kicked, hit and whipped. She reportedly gave birth prematurely seven hours later. She was allegedly denied access to medical care at the time, and had her baby taken by police officers. The baby reportedly died but she was reportedly not informed of the death until two days later.

7. **Khelef Khalifa,** a founding member of the opposition Safina political party was reportedly arrested around mid-day on 12 January 1996, which was supposedly the eve of a visit by some of the party's national officials to Mombasa. He was reportedly taken to a number of police stations, including the Urban police station, the Port police station and the Makupa police station. According to the information received, at around 2 a.m., while he was being driven away from the Makupa station, just near the Mombasa bridge the police allegedly beat him and interrogated him about belonging to the Safina political party. He was reportedly put in the boot of the car and one of the officers allegedly suggested that they take him into the bush and shoot him. Another officer allegedly said they should throw him over the bridge. He was reportedly released from police custody four days later.

8. **Jennifer Njoki**, a 16-year-old orphaned school-girl was reportedly arrested at her brother's house on 17 October 1996 and taken by police officers to the Pangani police station. After reportedly being interrogated as to the whereabouts of her brothers, police officers allegedly stripped her naked, whipped her and pulled out her finger nails. She was reportedly detained at the police station for a further five days, after which she was released. According to the information received, she later attempted suicide.

9. On 17 July 1996, **a student** at Githunguchu Primary School in Kiambu was allegedly caned at least 11 times by three teachers. She reportedly lost consciousness and was said to have been taken to hospital where she died. The teachers were said to have been subsequently charged with murder, however the case was reportedly dismissed on the grounds that the post mortem results had allegedly indicated a pre-existing heart problem.

10. **Lucy Muthoni Muthumbi**, a 38-year-old woman who had just given birth, was reportedly arrested on 17 October 1996, together with her husband, and taken to the Central police station in Nairobi. At the police station she was reportedly stripped naked by police and searched before being locked up in a cell. While in the police station, she was reportedly kicked on her thighs and had some of her braided hair pulled out of her head. She was allegedly threatened that she would be killed by the police officers present. According to the information received, 13 days later she was released. She was reportedly later told by one of the police officers involved that she had been a victim of mistaken identity.

11. On 25 October 1996, a **12-year-old boy,** along with several other children, at Munyu Primary School in Naivasha was reportedly caned repeatedly on the hands by two teachers when they had allegedly left school early without permission. As a result, he was said to have sustained severe bruising, swelling and serious nerve damage to one of his thumbs for which he

reportedly required ongoing medical treatment for over two years. The teachers involved were reportedly charged and convicted of assault. They were allegedly fined only K Sh 2,000 (the equivalent of US$ 35) each and were reportedly still teaching at the same school.

12. **David Okello** who reportedly retired from his position as Senior Public Health Technician on 31 December, 1996, was allegedly beaten by Kisumu Municipal Council askaris in January 1997, allegedly pursuant to an order of the town treasurer. He had reportedly gone to collect his retirement benefits at the time of the alleged beatings.

13. **Mark Kwata,** a nurse at the Kakamega General Hospital and **Morgan Opembe,** a businessman, were allegedly beaten by police officers in Kakamega in January 1997. According to the information received, the local police chief has launched an investigation into what happened.

14. **Charles Kinyua,** a Kerugoya taxi driver, was allegedly beaten by administration policemen at around 11 p.m. on 24 January 1997. According to the information received, the policemen accused him of smoking and peddling bhang and ordered him to produce it. When he reportedly denied the accusations, he was taken to the local Kerugoya police station. On the way to the police station, he was reportedly asked for a bribe to be released. When he reportedly said he did not have any money, one of the police officers allegedly hit his private parts with a boot, which made him fall to the ground. He was reportedly later operated on at Kerugoya District Hospital.

15. **Joseph Mwangi Muiruri**, an 18-year-old boy was reportedly arrested by police officers in Kigumo on 13 February 1997. According to the information received, he was subsequently investigated and found innocent. However, instead of being released, he was reportedly taken by a police officer from the station to an unknown location. He was later found dead. A post mortem examination is said to have found that the cause of death was head and chest injuries, allegedly the result of the beatings.

16. **John Kamanda**, a Kenya Human Rights Commission monitor in Nairobi, was reportedly on his way home from Muthaiga, on 17 February 1997, where he had been collecting signatures for a Commission petition against police killings, when he was reportedly stopped by policemen. The officers allegedly grabbed him by the collar and accused him of being a thug who was harassing residents at night. A second police officer allegedly grabbed an envelope he was carrying. Upon noticing that it contained material on the KHRC "Campaign against police killings" and other documents on human rights violations in Kenya, the officer allegedly hit him hard and accused him and the KHRC of defending "criminals". He was allegedly kicked and slapped several times and when he reportedly refused requests to hand over his materials, he was allegedly hit more vigorously. He was reportedly then ordered to leave, amid insults and verbal abuse.

17. **Macharia Gicheru**, a peasant farmer from Londiani, Nakuru district, suffering from tuberculosis, was reportedly arrested by so-called "flying squad" officers on 18 February 1997. At the time of his arrest he was reportedly preparing to go to hospital. The police officers reportedly told his wife that they were taking him to Sotik for interrogation, supposedly in connection with a theft of spare car parts. According to the information received, he was instead

driven to Eldoret. He was reportedly lying on his back in the police vehicle when he was being driven. According to the information received, he was then taken to the "flying squad" headquarters at the Pangani police station in Nairobi, having been allegedly savagely beaten by police. When he was at the station, he was reportedly put in a wet cell, was refused requests to be taken to hospital. According to the information received, he was suffering from acute pain in the ribs, diarrhoea and vomiting. He was reportedly kept in the police station for seven days and died on 24 February 1997. Apparently, his relatives went to the police headquarters to lodge a complaint about his death. However no inquest was held, as reportedly required under Kenyan law.

18. **Johnson Kigwiri** was reportedly arrested by a police officer on 8 April 1997 at a bar in Kamukunji. According to the information received, he was first taken to Shauri Moyo police station, where he was reportedly held until 9 p.m. before reportedly being transferred to Ruiru police station and finally, the same evening, to Makuyu police station. At Makuyu police station, he was allegedly kicked and beaten repeatedly by police officers using rungus. At the time of the alleged beatings, he was reportedly asked to surrender a sewing machine that had reportedly been sold to him. His denial of any knowledge about the machine reportedly led to further alleged beatings by the police. According to the information received, the following day police officers returned and allegedly beat him with whips and kicked him for more than an hour. On 10 April, he was reportedly taken to Kabati police station, where he was reportedly detained until 21 April 1997. At this police station, he reportedly sustained a knee injury, allegedly from police beatings.

19. **Mariam Mweru**, the wife of a suspect in a 96 million Kenyan shilling theft case was reportedly arrested by the police in May 1997. According to the information received, she was allegedly raped by a police officer in Karura Forest at gunpoint. The police officer also allegedly put pepper into her vagina before forcing her to wash herself with dirty water. An investigation into these allegations has reportedly been ordered by a court.

20. **Sekoture Awando**, a businessman based in Kisumu, was reportedly arrested from his house in Kisumu by an assistant chief, a police officer and a KANU Youth Wing member in May 1997. He was allegedly frog-marched to the chief's camp for reasons unknown to him. At the camp, he was allegedly beaten with walking sticks, which caused a fracture to his femur. The chief and his team then reportedly hired a taxi and took him to Kisumu police station where he was accused of being in possession of bhang. He was later reportedly released unconditionally.

21. The Special Rapporteur has received information on three rallies organized by the National Convention Executive Committee (NCEC) in 1997, which were reportedly dispersed by the police, using force. On 3 May 1997, NCEC reportedly organized a rally at the Kamukunji grounds in Nairobi. According to the information received, the meeting was called to discuss constitutional reforms and to discuss resolutions of the Limuru Convention held between 3 and 6 April 1997. The meeting was reportedly disrupted before it commenced at 10 a.m.. According to the information received, police officers armed with pangas and whips were stationed from 8 a.m. about a kilometre from the meeting at the Machakos Country Bus Station. Two preachers, the **Reverend Timothy Njoya** and **Samuel Njoya** were reportedly the first to be stopped by police at the Country Bus Station. They were allegedly whipped in full view of the

police before walking to the Kamukunji grounds, which police had allegedly sealed off, blocking all entries. While he was arguing with the police, the Reverend Njoya's robe was allegedly grabbed and torn by an officer. The two men were then reportedly taken to the middle of the Kamukunji grounds and held there for more than seven hours without having a chance to leave or to address the attendants. Thereafter, a number of NCEC officials reportedly entered the grounds from different directions. Among the group was **Peter Ndwiga,** who was allegedly "hit" by more than six police officers as he made his way through a human barrier that had been erected. **Willy Mutunga**, NCEC Co-Convenor and Vice-Chairman of the Kenya Human Rights Commission, was allegedly slapped as he tried to enter the grounds. The police officers then reportedly held the leaders in the middle of the grounds and allegedly used tear gas and beat several people present. Members of the Shauri estate were reportedly among the group of people allegedly beaten by the police. According to the information received, at around 4 p.m., the Reverend Njoya and two other men led members of the public out of the Kamukunji grounds. Upon reaching the Country Bus Station, the group reportedly encountered a contingent of regular and General Service Unit police officers. The police officers allegedly exploded tear gas canisters and used whips, batons and machetes to disperse the group. Many people reportedly began to disperse, however at least one man was arrested, **James Orengo**, an opposition member of Parliament, who was later released. Journalists were also reportedly injured during the confrontation. It is reported that **Govedi Atsusa**, a photographer for the Daily Nation sustained an injury to his arm. Another journalist, **Karen Shaw**, who was working with the Kenya Human Rights Commission, was allegedly hit by a club by a police officer as she took photographs of what was happening. She reportedly wrote a letter to the Commissioner of Police but there has allegedly been no response.

22. **Grace Wangari Gicharu** was allegedly brutally assaulted on 13 February 1997 by the Assistant-Chief at the Ol-Kalou police station after she reportedly refused to leave her house, which was going to be destroyed. She was allegedly repeatedly knocked against the wall. She allegedly sustained serious injuries and had a miscarriage. According to the information received, she reported the incident to the Ol-Kalou police station and obtained a P3 form, which was later filled in by a doctor after she had received medical treatment at the Ol-Kalou district hospital. The officer-in-charge of the police station is nevertheless said to have refused to take action. On 16 August 1999, her lawyer is reported to have written a letter to the Commissioner of Police, who responded by letter dated 4 December 1999 that the investigation had been closed because of lack of evidence.

23. A second NCEC constitutional reform rally reportedly took place on 31 May 1997, also in Nairobi. According to the information received, many participants present at the rally reportedly sustained serious injuries and were later admitted to various hospitals when the rally was allegedly disrupted by police at Central Park, which had been cordoned off by police at around 8 a.m. The rally reportedly commenced at St Andrew's Church near the University of Nairobi and then proceeded to Central Park, which people were reportedly blocked from entering. According to the information received, police officers allegedly threw stinging teargas canisters into the crowd and allegedly started beating people indiscriminately when prayers were led by Reverend Njoya. People reportedly scattered and trampled on each other and police allegedly beat several people present. The following individuals were reportedly amongst those harmed: **Muturi Kigano,** the Chairman of the Safina party, was allegedly hit on the head by police. He was reportedly admitted to Nairobi Hospital for treatment. **Saulo Busolo**,

Ford-Kenya MP for Webuye, reportedly sustained a broken arm after he tried to stop police batons allegedly aimed at his head. He was reportedly admitted to Nairobi Hospital for treatment. **Eddah Rubia**, reportedly a Ford-Asili activist, suffered a fractured leg after a police officer allegedly hit her repeatedly with a baton. **Kiraitu Murungi**, Member of Parliament (MP) for Imenti South, was reportedly injured on the head when a teargas canister exploded on his head. **Njuguna Muthahi**, a Kenya Human Rights Commission official, was reportedly running from police officers when he fell to the ground, where he was allegedly beaten on the head and elbows. He was reportedly later treated at the AAR clinic in South 'B'.

24. On 10 October 1997, a third NCEC rally, of around 5,000 people, reportedly took place in the Kamukunji grounds, Nairobi. It was reportedly interrupted by heavily armed police officers who allegedly entered the venue and boxed, kicked and whipped persons present. The officers were reportedly acting under the control of the Buru Buru divisional police chief. According to the information received, police officers lobbed tear gas canisters into the crowd, which resulted in several injuries. Some people were also reportedly injured by rubber bullets. The following individual cases have been brought to the Special Rapporteur's attention: **Henry Ruhiu**, MP for Embakasi, who is a recovering stroke victim, was reportedly beaten in front of around 40 local and international journalists. The police chief allegedly descended upon him with sticks, kicking his ribs after knocking away his walking stick. **Paul Muite**, also an MP, was allegedly kicked and punched before being held firmly on the neck and dragged for several metres. Other MPs allegedly beaten and/or tear-gassed are **Aloo Ogeska**, **Otieno Mak'Onyango**, **Benjamin Ndubai**, **Kamau Icharia**, **Philip Gitonga**, Safina members **Muturi Kigano**, **Richard Leakey** and **Ngengi Muigai** of FORD-Asili.

25. **Imam Amir Banda** was reportedly arrested on 16 August 1997 by six armed police officers who came to his house and told him that the Kwale District Commissioner wanted to see him. He was reportedly held until the following day when he was taken to the provincial headquarters of the Criminal Investigations Department. According to the information received, at the headquarters he remained in custody for five days until 21 August 1997. He was reportedly then taken to court and remanded for 40 days. While in custody, he was reportedly denied food for three days. In one reported incident, he was allegedly tied to a roller by police and rolled twice on the beach, while he was naked. He was also allegedly beaten by police officers with sticks on his joints and on the soles of his feet. According to the information received, he was denied access to medical attention for these reported injuries.

26. **Richard Abura**, the editor of a Vihiga-based government newspaper, was reportedly held by the police for an hour on 7 October 1997, at the Majengo market. The police reportedly went to his house at the market at 10 p.m. and allegedly told him that he had been a public nuisance for too long. He reportedly struggled with the policemen who allegedly hit him with gun butts and removed his shoes before frog-marching him to the Vihiga police station, about five kilometres away. He was reportedly later released on a K Sh 5,000 bond, after the intervention of CID officers who knew him.

27. The Special Rapporteur has received information that around 30 plain clothes policemen allegedly forcibly dispersed a tree planting meeting at Ihururu in Nyeri district on 20 October 1997. The ceremony was reportedly organized to pray for constitutional reforms in the country and to honour so-called "freedom fighters" of Kenya. The meeting was reportedly

dispersed by police officers allegedly using tear gas. According to the information received, police officers also allegedly kicked many people present. As people dispersed, police allegedly pursued then in police Land Rovers with canisters of tear gas. Several people were reportedly arrested and detained for about six hours.

28. **Erasmus Nasongo** and **Edward Nafula**, two young men, were reportedly suspected of having stolen household items from a farm in Kipkabus and taken to the offices of the chief of police in the Burnt Forest area on 8 November 1997. At the offices, they were allegedly beaten by the chief and the owner of the farm from where the goods were missing. Mr. Nasongo was reportedly beaten very badly and thrown into a river, where he stayed for an hour. Mr. Nafula was reportedly taken to the Eldoret Nursing Home in a critical condition.

29. The Special Rapporteur has received information concerning the allegedly violent dispersion of people at the Nakuru Municipal Council Old Town Hall, where election votes were reportedly being counted on 30 December 1997. According to the information received, armed police violently beat several persons outside the hall. Many of the people injured were reportedly treated by the Kenya Red Cross. The following individuals were reportedly amongst those who were injured. **Peter Mbae** reportedly had his nose and face wounded. **James Mwangi** was reportedly rushed to Pine Breeze Hospital with a gunshot wound to his left arm, which was reportedly shattered by the bullet. **Joseph Onyango** was reportedly shot in the head, while **Michael Onyango** was also reportedly shot in the left arm, both men were reportedly taken to the Nakuru Nursing Home for treatment.

30. **Simon Lasike Turkanan** and his five brothers were reportedly arrested on 3 January 1998 by the "flying squad", allegedly in connection with tribal clashes in the Lai Kipia district (Kikuya, Pakot, Samburu). The police were reportedly carrying out a raid and rounding up young people. The brothers were first taken to a General Security Unit camp where they were beaten on the soles of their feet, back and legs. The Special Rapporteur found that Simon Lasike Turkanan bore long slash marks on his back, which were reportedly caused by whips. Every day, Simon Lasike Turkanan and his brothers were reportedly asked to produce guns used in the clashes. He was reportedly beaten with hoes on the soles of his feet, which were swollen for two weeks. He reportedly did not give the police any information and allegedly said that they were not involved in the clashes. He was subsequently said to have been locked in Ngarwa for one week in the custody of the "flying squad". He allegedly did not receive any medical attention and the "flying squad" reportedly refused to issue him with a P3 form. He is said to have been taken to Nyahururu court, where he was allegedly told to wait for documents to allow him to be remanded. He reportedly informed the judge that he could not walk on his feet, that he was not receiving medical treatment and that he was suffering in custody. The judge allegedly told him that he was looking for "flying squad" members to question about his treatment. Simon Lasike Turkanan was reportedly further informed that the court was waiting for documents to determine if he was responsible for murder, which would determine where he was taken. According to the information received, the interrogation by the "flying squad" continued and was allegedly accompanied by beatings. Simon Lasike Turkanan was reportedly tied to a table by his hands and legs, and his head was allegedly placed under the table, when he was said to have been beaten. The Special Rapporteur found that Simon Lasike Turkanan bore a mark on his upper thigh and horizontal marks across his buttock. Again he is said to have stated that he had nothing to confess.

31. **Dominic Kabeo Kamau** was reportedly stopped by two police officers from Nakuru in the Lare area of Njoro on 25 February 1998 while he was on his way to work at a nearby farm. He was reportedly stopped because he was carrying a panga (machete) and a hoe. According to the information received, he was taken to a valley where police officers allegedly beat him with a metal bar and shaved his hair off with the panga, which they had seized from him. He reportedly received injuries to his wrist and left ankle. After the police officers left him, he apparently limped his way to a nearby road, from where he was taken for treatment at the Rift Valley Provincial General Hospital.

32. **Yarrow Abdi** and **Ibrahim Hussein** were allegedly shot by police on 28 February 1998 at Korogocho on suspicion of being robbers. After the first shot, they were taken to a remote place where the police are said to have attempted to summarily execute them. They were allegedly taken by the police to Kenyatta National Hospital mortuary as the police officers believe they were both dead. Yarrow Abdi was only seriously injured, while Ibrahim Hussein was declared dead. Yarrow Abdi was admitted to the hospital, where he reportedly stayed under police guard until 10 March 1998. On that day, he was allegedly taken by the police to Kasarani police station, where he was charged with preparing to commit a felony. The court is said to have ordered his release on bail, but he could only raise the necessary money after having spent six days at the Area Remand Home with unhealed bullet wounds and a bullet still lodged in his ribs.

33. **Patrick Kamende Mwakavi** was reportedly detained at the Karatina Criminal Investigation Department police station on 9 March 1998. According to the information received, when he refused to sign a statement implicating himself in a robbery, one of the police officers present allegedly beat him over the shoulders and knees with a piece of metal, reportedly saying to him that his signature would be his only saviour. He was apparently taken to Karatina Hospital but removed by police because he had been talking to journalists.

34. The Special Rapporteur has received information of the mass round-up and alleged torture of Mbalambala residents on 12 and 13 March 1998. According to the information received, at around 3 a.m. on 13 March, approximately 38 people were reportedly arrested. Their arrests reportedly took place after a police officer was reportedly killed in the area on 9 March 1998. The information received indicates that people were taken from their homes, herded together and then stripped naked, tear-gassed, kicked and whipped by police officers. The police officers who allegedly did this, according to the information received, may have been officers from outside the Mbalambala force. The events reportedly took place in a bush area about three kilometres from Mbalambala, as well as at the police station in Mbalambala. Some of the people were reportedly made to hang by their hands from trees, which reportedly caused paralysis of their arms. According to the information received, a commission was established to investigate what happened, but its findings have reportedly not yet been made public. The Special Rapporteur has received information on the following individual cases:

> **Barre Shale**, a 42-year-old man, was reportedly sleeping in his house when he was woken by several police officers at 3 a.m. on 13 March. He was reportedly taken to a bush area three kilometres from Mbalambala, together with approximately 48 other people. There, police officers reportedly ordered him to strip naked and lie down. Police officers then allegedly sprayed tear gas at him. He was reportedly coughing, choking and

vomiting as a result of the tear gas. He was then reportedly put into a truck and taken to the police post. At the post, police reportedly ordered him to kneel down naked and they tied his hands behind his back. Next, the police officers allegedly tied his testicles to a gadget which they pulled on, which caused him to urinate. One officer reportedly threatened to rape him. He was also allegedly kicked and whipped by the police, who used leather whips and guns. He reportedly remained at the police station until the following day. According to information received, he is still suffering from chest pains and is unable to control urination as a result of what happened. He has apparently not received any medical attention.

Aden Bilat Hadun, a 56-year-old man with a speech disability, was reportedly also arrested from his house in the early hours of 13 March. He was reportedly taken to the same bush area, where seven police officers wearing boots allegedly trampled on his chest. According to the information received, the police officers allegedly demanded that he tell them where some stolen guns were. Police officers allegedly hit him with gun butts when he did not respond. According to the information received, he was in very poor heath after the alleged incident and was unable to talk about what happened. He reportedly suffered a left broken rib, and now frequently vomits blood and is unable to eat, allegedly as a result of the police beatings. He has apparently received no medical attention.

Mohammed Abdile Abdi, a 28-year-old Mbalambala shopkeeper, was reportedly arrested at his shop on 13 March. Police officers in the Mbalambala police reportedly made him strip naked and then tied him to a tree. While he was tied up, he was reportedly kicked on the back and slapped around by police officers who also reportedly verbally abused him. Police officers are said to have demanded that he hand over some guns which he reportedly knew nothing about. He was allegedly hit with gun butts on his chest. According to the information received, he now has breathing problems, suffers from nose bleeds and cannot bend, owing to the injuries he reportedly sustained on his back. He also apparently has rope marks on this body as a result of reportedly being tied to a tree overnight. He is believed not to have received any medical attention.

Issa Hassan Mursal, was reportedly arrested on the same night by the police. He is said to have been kicked and beaten by the police and subjected to tear gas. He reportedly fell on a stone after the alleged beatings, and was rendered unconscious. According to the information received, he now regularly coughs up blood and suffers from pain in his left leg.

Shaiya Mohammed, an 18-year-old woman living in the Dujis division was reportedly approached by police at her house on the afternoon of 12 March. Several police officers reportedly asked her to produce her husband. She apparently explained that her husband was out of town and the police officers then left her house. Four of the same officers reportedly returned at around 1 a.m. on 13 March and again asked for her husband. After explaining that her husband was still out of town, she was apparently ordered not to close the door behind her. One police officer then allegedly sneaked behind her, grabbed her neck and encircled it with both of his hands. She reportedly fell to the floor, where the police officer allegedly raped her continuously until about 4 a.m. Her 14-year-old sister was said to have been present in the room and was holding the woman's 10-month-old baby. Shaiya Mohammed is believed to have stayed in hospital for the injuries she reportedly sustained.

35. **Godfrey Ngige Kinuthia** was reportedly picked up by two police officers on 27 March 1998 and taken to the Jogoo Road police station. According to the information received, he was beaten unconscious by the police officers, who also allegedly injured his penis for reportedly attempting to rape his girlfriend. He was reportedly later taken to the Kenyatta National Hospital for treatment.

36. **George Gacheru Muchiri** was reportedly arrested on 31 March 1997 at a petrol station where he was working, in Banana town, Kiambu district. He was reportedly arrested by two plain clothes policemen on suspicion of having stolen some money. He was taken to Karuli police station, where he reportedly stayed for two days. He was then transferred to Kiambu police headquarters, where he was tied to a wooden stick and hung between two tables. He was then allegedly beaten with wooden sticks on the legs and on the soles of the feet. He reportedly spent one night in Kiambu police station before being transferred to Mai Mahi forest, near Narok, where, along with two other detainees who had been arrested on suspicion of having stolen the money in the same petrol station, he was severely beaten after having been hung up on a tree. He allegedly had a shot fired above his head, which is said to have impaired his hearing. His private parts were allegedly tied up and beaten. The two others were allegedly subjected to the same treatment. They were then reportedly taken back to Kiambu police station. According to the information received, during the transfer they were allegedly beaten again. They reportedly spent one night at Kiambu police station before being returned to Karuli police station, where they reportedly stayed for three days. On 9 April, George Gacheru Muchiri was reportedly taken to Kiambu court, where he was charged with theft. He reportedly did not complain about the ill-treatment to which he had allegedly been subjected. He was taken on remand to the Industrial Area prison where he reportedly stayed for one week, before a relative could pay the bond. He then reportedly received medical treatment. He reportedly did not file any complaint because of fear of reprisals.

37. **Vincent Nyumba Kiema**, a 27 year-old man from Mutune village in the Kitui district, was reportedly arrested on 5 April 1998 for his alleged involvement in a shop break-in. He was reportedly detained at the Kitui police station for seven days. According to the information received, his mother visited him at the police station twice and noticed several injuries. During her second visit on 9 April, she allegedly saw a police constable beat him, saying that he had not cooperated with the police. On 14 April 1998 he was brought to court, where he reportedly complained of his treatment by the police. He was reportedly released on a bond to enable him to seek medical attention for chest, back and stomach pains. He was also reportedly frequently passing blood in his urine. He died on 20 April. A post-mortem examination was apparently performed, which found that his death was caused by the rupturing of some of his internal organs, including his kidneys and liver, allegedly as a result of the police beatings.

38. **Hassan Salesa, Ibrahim Dadacha, Ali Tuka, Barako Mohamed, Adan Boru** and **Morid Wachu**, all from Rapsu sub-location, Isiolo district, were seriously injured on 25 May 1998 by Kenya Wildlife Service (KWS) officers who accused them of having killed an elephant. They were all detained and later released without charge. In the same incident,

Sarah Aki is said to have miscarried as a result of the beatings she was subjected to and **Muyo Habiba**, a nursery school pupil, was reportedly seriously injured and admitted to the Isiolo District Hospital.

39. **David Njuguna** was reportedly arrested in June 1998 on suspicion of having stolen his aunt's radio and clock. He was reportedly taken to Kikuyu police station, where he was allegedly beaten on the soles of the feet and on other parts of his body in an attempt to make him confess.

40. **Mohammed Sheikh Yahya** was reportedly arrested at his home at about 5.30 p.m. on 13 June 1998 by military officers who allegedly suspected him of having killed a herdsman during a bandit attack in Boka. Military officers allegedly tied him to the back of a Land Rover and dragged him for about two kilometres to a nearby forest. He was reportedly killed in the forest. According to the information received, when his body was found, his eyes had been gorged out and one of his ears cut off. A post mortem examination was reportedly performed which revealed that he had suffered cuts to his chest, back, legs and head. His upper torso had also reportedly been partly burnt and both of his wrists had been broken. The results of the post mortem examination were allegedly ordered to be covered up by security officers.

41. In connection with the same alleged bandit attack in Boka, military forces reportedly arrested 30 people in the Bangale town of Tana River on 13 June 1998 for alleged possession of firearms. Eleven of the suspects were said to have been taken to a military camp at Boka where they were reportedly held for eight days and **subjected to ill-treatment.**

42. **Ronald Ngara Momanyi** was reportedly arrested by police on 21 June 1998 and taken to the Nyamira police station. While at the police station, police allegedly beat him as he was being held incommunicado. His dead body was found shortly after, at the Nyamira District Hospital mortuary, by family members. His body had allegedly been dumped there secretly by the police. His body was reportedly covered in marks indicative of having been beaten. All of his limb joints were reportedly scarred and broken, and there were apparently marks on his hands and legs showing that they had been tied together with wire. His back was apparently covered in welt marks, allegedly as a result of whip lashing, and there was reportedly clotted blood around his nostrils and mouth.

43. **Nickson Cheruiyot** was reportedly assaulted at his home in Nakura at 6.30 p.m. on 28 June 1998 by members of the Administrative Police who kicked him in his genitals and slapped and punched him when he refused to hand over his money. One police officer allegedly beat him with a stick and made death threats against him. The officers are then said to have taken him to the bush where he was allegedly kicked until 10 p.m. The police are believed to have subsequently asked him for his identity card, which he reportedly handed over to them. They allegedly stated that they had mistaken him for someone else and left him in the bush. The same night, Nickson Cheruiyot is said to have reported the event to the assistant chief, who allegedly accompanied him the following morning to see the police officers, who reportedly once again subjected him to death threats. Following this event, Nickson Cheruiyot is reported to have met with an Assistant Commissioner of the Police, who allegedly did not take any action despite a promise to investigate and advice that he seek medical treatment. Subsequently, Nickson Cheruiyot reportedly met a senior officer of the Administrative Police, who allegedly

asked him to forget the whole matter. After having consulted a medical doctor, Nickson Cheruiyot was reportedly referred to the Rift Valley Hospital, where his genitals were operated on. As he was not able to pay KSh 10,000, the operation was allegedly delayed for three days. A member of the Administrative Police was subsequently said to have been arrested and to have agreed to pay Nickson Cheruiyot's hospital bill. The hospital's invoice for KSh 80,000 was allegedly sent to a senior officer of the Administrative Police; however, the bill was said never to have been paid. Consequently, the Administrative Police officer was reportedly released from detention in order to look for the money, but allegedly never settled the bill, which reportedly led to the hospital's refusal to continue further treatment. Nickson Cheruiyot was reportedly discharged from hospital after 50 days and recorded a statement at Njoro police station on 24 August. He was said to have been issued a P3 form which he sent to a government medical doctor, as the medical doctor who had performed his operation was not a government doctor and hence could not complete the form. He was reportedly requested to go to Kenyatta Hospital where his form was allegedly completed and where he was again operated upon. After his release from hospital, Nickson Cheruiyot reportedly handed in his form at Njoro police station, where he was said to have been told that his statement had been misplaced. He reportedly recorded a second statement and was referred to another police station, in Likin, which allegedly sent him back to Njoro police station. After he had been sent back and forth between the two police stations for over a week, he reportedly eventually went to the officer-in-charge of the police district, who advised him to record a second statement. He was reportedly informed that the accused police officers would record separate statements, which they allegedly refused to do. In May 1999, he reportedly had to return to hospital. The P3 form was said to have been completed incorrectly in that the police surgeon omitted to mention the scar on his torso allegedly caused by beating with a rifle. He also reportedly stated that Nickson Cheruyot' testes were normal, whereas one testis was said to have been removed and the other to have been operated upon. Reportedly, the government doctor based his report solely on that of the Kenyatta Hospital, without independently examining Nickson Cheruiyot. Allegedly, journalists have been barred from reporting on this case and from visiting Nickson Cheruiyot in the Rift Valley Hospital. The Kenyan Head of State is said to be aware of this case. Reportedly one Administrative Police officer involved has committed suicide.

44. **John Chege Komu**, 20 years old, was reportedly arrested with two others on 3 July 1998 and taken to the Kahawa Sukari police station, where he was held for five days. He reportedly lost consciousness and went into a coma as a result of alleged police beatings. He was reportedly rushed to the Thika General Hospital before being transferred to the Forces Memorial Hospital, where he died on 8 July 1998.

45. **John Muhia Munyinyi** was reportedly arrested together with his two brothers, his parents and his three sons on 24 July 1998 in the Githunuguri area of Kiambu district. Police from Githunguri division allegedly raided his home and reportedly handcuffed his three sons and led them to a nearby road, where they set police dogs on them. Two of his sons, **David Munyinyi** and **Joseph Njuguna Muhia,** reportedly sustained serious dog bites which rendered them unable to walk independently. All the family members were reportedly taken to the Githunguri police station were they were reportedly denied access to medical treatment and to relatives who wanted to visit them.

46. **Simon Munyao** was reportedly arrested on 25 July 1998 at Muthesya by a local chief accompanied by KANU Youth Wingers. According to the information received, they accused him of having stolen two goats. He was allegedly suspended upside down from a tree for two hours with his hands and legs tied together tightly. He was allegedly severely beaten with a tyre whip. He was then reportedly taken to a police station by boat on the Massinga dam and was allegedly immersed in the water several times during the transfer. He reportedly sustained injuries to the head, chest and legs.

47. **Paulina Nauram, Ekiru Ekuwam**, aged 11, **Akiru Asikiria**, aged 13, **Lochuck Elimlim**, aged 17, **Mput Etelej**, aged 17, Paulina Napeyok, aged 17, **Nayanae Nakwawi**, aged 32, **Akatapan Ekuwam**, aged 25, **Elisabeht Asikiria**, aged 35, and **Nkotin Mtuu**, aged 75, all from Ngare Mara and Daaba, Isiole district, were allegedly assaulted on 8 August 1998 by a contingent of about 1,000 uniformed and armed men who were reportedly searching for stolen guns and livestock. They were allegedly severely beaten and some of the women were reported to have been raped in an attempt to make them produce the stolen arms.

48. **Murage Njoka** was reportedly arrested on 13 August 1998 and accused of robbery with violence. He was interrogated for two weeks at Kikuyu police station, where he was allegedly severely beaten with batons, clubs and sticks on his chest, legs and ears. He is said not to have signed any statement and to have complained to a judge, who reportedly wrote a note in order to send him to a hospital for medical treatment. The note is believed to have been thrown away by the police. He was reportedly sent to Kumiti prison on remand. In September 1999 he was still awaiting trial in the same police station.

49. **Peter Ndegua Kemali** was reportedly arrested on 30 August 1998 by CID officers and taken to Kikuyu police station and then to Apland police station. While detained in Kikuyu, he was allegedly forced to sit on the floor and beaten with clubs every day during two hours. At the time of the interview, scars on his legs and arms consistent with his allegations were still visible. After six days, he was reportedly transferred to Apland police station. According to the information received, during his transfer between the two police stations he was severely beaten and was then forced to sign a statement upon arrival at Apland police station, where he reportedly stayed for three days. On 9 September 1998, he was reportedly charged with robbery with violence. He was then reportedly sent to Kumiti prison on remand.

50. On 16 September 1998, a **13-year-old student** at a boarding school in Eldama Ravine was allegedly caned more than 20 times on his bare buttocks after having allegedly accidentally broken a school window. After reportedly paying for the window, he was said to have been called into the head teacher's office, where he was allegedly asked to lie on the ground and to remove his shorts. As a result of the caning, he was said to have lost consciousness. When he regained consciousness, the teacher reportedly continued hitting him when he put his shorts back on. He was reportedly not allowed to go home after the beating. As a result, he was said to have suffered from swollen buttocks, a severe headache, chest pain and a dislocated right thumb. Criminal charges had reportedly been filed against the head teacher, however the case remained unresolved at the time of writing of the present report.

51. On 17 September 1998, a student at Kayoi primary school in the Rift Valley province had allegedly died after being caned by a teacher. The teacher was said to have been subsequently charged with murder on 21 April 1999, but the charges were said to have been withdrawn by the prosecutor on 10 May 1999, pending an inquest. A magistrate allegedly discharged the case, pending the outcome of the inquest. The district education officer reportedly did not take any disciplinary action against the teacher, on the grounds that the post-mortem had been said to have revealed that the student had been malnourished and that his intestines had encoiled abnormally.

52. On 23 September 1998, a **13-year-old girl** and the rest of her class were reportedly severely caned by her head teacher at Masewani primary school. She was allegedly asked by the teacher to lie down and remove her cardigan. She is then said to have been caned on her back for more than five times in front of the other pupils. As a result, she reportedly lost consciousness and sustained cuts and bruises on her hand and back. Subsequently, she allegedly reported what had happened to the police. When she returned to school three days later, she was said to have been threatened by the head teacher with further beatings and to have been told that she had been expelled. Her mother, who is said to have been a teacher at the same school, and her father, who reportedly complained to the head teacher, were allegedly also threatened. Allegedly owing to her parents' persistence, the head teacher was charged with assault in Kiambu District Court. The case was still pending at the time of writing of the present report.

53. **Clement Njuguna Ndungu** was reportedly shot on his right wrist and left elbow around 1 p.m. on 23 September 1998 by a police officer while he was working on his farm in Katungu, Subukia location, Nakuru district. At the time of the interview (25 September 1999), his elbow was still swollen to the extent that it appeared deformed. According to him, it was still very painful. The police, who had been called upon to stop a land dispute are said to have shot at random. The inspector who had shot him asked his colleagues why Clement Njuguna Ndungu was not dead and asked them to take him with other arrested persons to the Kirengero police station. Upon arrival at the police station, he was reportedly left alone in the back of the truck and was eventually transferred to the general provincial hospital around 9 p.m.. He was reportedly only treated the following day. His family is said to have come the same day and to have taken him to the Pine Breeze (private) Hospital, where he stayed for five months. It is reported that he filed a complaint on 10 May 1999 against the inspector who allegedly shot him. According to the information received, he was then arrested on 23 May 1999 and taken to Subukia police station, where he was informed that he was charged with five minor charges, including stealing firewood and breaking into a house. He was summoned to attend a court hearing, but the High Court is said to have ordered that the case against him be dropped. A case for compensation is reportedly still pending.

54. **Pauline Mueni** was reportedly set ablaze on 25 September 1998, after her boyfriend, who at the time was a constable in the Kitui police force, allegedly locked her in his house in the Kitui police station residential yard and doused her with paraffin. Her boyfriend had reportedly approached her on the street while she was walking with a friend and, stripping her clothes off her, had slapped and kicked her. He reportedly frogmarched her to the police station, threatening to kill her. On the way to his house, they reportedly passed by duty officers sitting outside the police station. They allegedly did nothing to come to her rescue when they saw her being attacked.

55. **Redempta Nduku** was reportedly arrested in September 1998 by members of the "flying squad". Allegedly she was stripped naked, her breasts were pricked with needles and her genitals burnt with cigarette butts in order to extract a confession. She was then allegedly blindfolded and raped. According to the information received, she was then taken to Thika court, where she was charged with robbery and detained on remand.

56. **Mzee Stephen Sum** was reportedly beaten on 15 October 1998 by the administration police on the order of a Chief of the Koisagat location, Uasin Gishu district, with whom he had had a personal dispute.

57. **John Khakhua Wanyama** was reportedly summoned without reason by the Assistant-Chief of Kuyawa, Bungoma district, on the morning of 23 November 1998. Upon arrival at the Assistant-Chief's office, he was allegedly beaten with sticks for approximately 15 minutes by the Assistant-Chief and three villagers. He was then reportedly tied with a rope and dragged into a bare cell in the Assistant-Chief's office. According to the information received, he was then transferred to the Chief's office where he was reportedly punched and kicked, and locked in a cell. On 25 November, he was reportedly released. He is said to have given a statement at the police station and was asked to go to the hospital in order to fill in a P3 form. He was reportedly treated for injuries on his back, shoulders ankles and wrists. On 18 January 1999, the P3 form was reportedly returned to the police station. On 24 January 1999, he is said to have been told by the officer-in-charge of the police station to come back later. He reportedly never received any response regarding his complaints. Six months later, he is said to have seen the officer commanding a police division and the Kakamega Provincial Police Officer who informed him that his file was not complete. Meanwhile, he is reported to have filed a civil case.

58. **Abdi Hussein Hassan** was reportedly arrested on 29 November 1998 in Dabad town. A lieutenant and a constable are said to have asked for his identity while he was in his brother's restaurant and then to have taken him to the administrative police camp in Dabad. He was reportedly taken with one of his friends, **Ali Abdullahi**, in a military vehicle to the forest, where he was allegedly severely tortured. Abdi Hussein Hassan was allegedly attached to the roof of a moving vehicle. His body was reportedly banging against the vehicle. He reportedly fainted. Water was then reportedly poured on him in order to make him recover consciousness. He was interrogated about a gun that he denied possessing. He was then allegedly beaten, kicked and burnt with a cigarette on his neck and legs. Ali Abdullahi was reportedly treated in a similar manner. This is believed to have lasted for six hours. They were then returned to the camp and released a few hours later. At the time of the interview (26 September 1999), Abdi Hussein Hassan was still suffering from headaches and had problems urinating. He reportedly complained to the district officer, who asked the lieutenant in charge of the operation to apologize, which eventually happened on 30 November 1998. On the following day, Abdi Hussein Hassan reportedly went to the Dabad police station in order to get a P3 form. On 3 December 1998, he was reportedly taken to Garissan Provincial General Hospital and then to Garissa Nursing Home to receive medical treatment.

59. **Hellen Wanjiru**, who was pregnant at the time, was reportedly arrested near her home and accused of loitering on 18 November 1998 by police officers from Mwiki police station.

She reportedly pleaded with police to release her after she started having labour pains, but they reportedly refused and allegedly slapped her. She was reportedly detained for 12 hours before giving birth prematurely.

60. **Dennis Muthomi**, aged 10, and another boy were reportedly arrested on 11 December 1998 and detained at the Meru police station, where they were allegedly severely tortured. The following day, they are said to have been admitted to the Meru District Hospital, where they were treated for multiple serious injuries, especially in the spinal and cervical areas.

61. **Peter Muraya** was reportedly arrested on 20 December 1998 at his home in Gitare Marigu, in Dandora, Nairobi, on suspicion of being in possession of chang'aa, an illicit brew. He was reportedly taken to Buru Buru police station, where he was detained for four days without being taken to court. His mother is said to have visited him on 23 December and he reportedly complained to her about the beatings he had been subjected to. On the following day, his mother found his body at the mortuary. The police is said to have claimed that he had committed suicide. According to a post-mortem examination, he died from suffocation. No action is said to have been taken.

62. **Peter Muchiri Munene** reportedly appeared before the Nyeri court on 30 December 1998 on crutches, suffering from a broken leg. He had allegedly been tortured by prison warders. According to the information received, the magistrate ordered an investigation the results of which were not known at the time of writing.

63. On 6 January 1999, at about midday, a contingent of armed government security personnel reportedly appeared at Danisa C village in the Tana River district. They allegedly started shooting indiscriminately, ordering men, women and children of the Galje'el community to come out of their houses. The security personnel are said to have subsequently told them to "go back" to Somalia and to have subjected them to beatings. They are also alleged to have raped about 20 women in an attack on two successive nights. The attack was believed to have been carried out in response to an attack against the district commissioner of Baringo which had reportedly been carried out by bandits near Lagabuna four days earlier.

64. **Jeffrey Lutilo** was reportedly arrested on 12 January 1999 in Malaba and taken to Malaba police station, where he was interrogated about a cousin accused of having stolen a car in Nairobi. One week later, he was reportedly transferred to Eldoret police station, where he is said to have stayed for two days. The first day, he was allegedly taken to a nearby forest, where he was severely beaten with wooden sticks for approximately one hour on his legs, feet and chest by five police officers from Eldoret and Nakuru. He is believed to have had a broken right leg as a result of the beatings. According to the information received, he was denied medical treatment while in detention, except some attention from fellow detainees. He was then transferred to Nakuru Central police station, where he was interrogated and beaten again with bamboo sticks on his back. At night, his testicles were allegedly tied up, pulled, beaten and squeezed. Matches were allegedly inserted into his penis. He was allegedly stripped naked, chained and suspended on a wooden bar between two tables, and beaten in that position. He is reported to have become unconscious several times. According to the information received, he was eventually asked to sign three different statements, none of which he was allowed to read. He signed because he was

in great pain. On 2 February, he was reportedly taken to Nakuru court, where he was charged with car robbery. He is said to have informed the magistrate of the alleged ill-treatment to which he had been subjected, and the magistrate is reported to have indicated that the prison guards would transfer him to a hospital for appropriate medical treatment. But he was reported to have been taken to the Nakurua general hospital only one week later. His leg is said to have been put in plaster and he also apparently received medical treatment for his penis, which was bleeding. He stayed at the hospital for four days. At the time of the interview (25 September) he was still receiving medical treatment while in detention in Nakuru prison and his case was believed to remain pending in court.

65. **David** was reportedly visited at his home in the middle of the night of 17 January 1999 by three police officers, 10 members of the KANU Youth Wing and a number of villagers from Kikuyu who had the intention of arresting him for rape. The allegations were allegedly solely motivated by a personal grudge on the part of the members of the KANU Youth Wing against David and his mother. It is reported that at 1 p.m. the previous day, David had protected a girl from being sexually assaulted by several men, but had not seen another girl who had reportedly been raped by the same men. He was allegedly subsequently suspected by villagers of having raped her. When the police arrived at David's home, his mother reportedly started screaming and three KANU Youth Wing members allegedly beat her. She was said to have subsequently attempted to run away and allegedly was cut by barbed wire. She also allegedly sustained swelling to her right eye and bruises to her thighs from being whipped. When David attempted to run from the police, the officers reportedly set a dog on him. Three policemen allegedly beat him all over his body with whips and clubs made of black rubber for over 45 minutes. When he reportedly lost consciousness, he was woken up and taken back to his home, where he was allegedly beaten again. His mother was said to have come back out of her house and to have been subjected to a renewed assault. At about midnight, David's brother, **Arthur**, reportedly attempted to come to his brother's and his mother's rescue with a sword. Subsequently, the police was said to have beaten him for about 15 minutes and to have unleashed the police dog, which bit his left thigh. He was also reportedly further beaten by the police with whips and clubs and had his arms tied with a belt. Arthur and David were allegedly subsequently taken to Kikuyu police station by the police. At about 2.30-3 a.m., they were said to have been placed in a cell. When their mother came to see them the following day, she was reportedly arrested and placed in a cell from which she was said to have been moved 15 minutes later. On 18 January 1999, an officer of the Criminal Investigation Department allegedly pre-prepared statements. Arthur was reportedly questioned by the deputy officer in charge of the police station about the rape allegation and wrote a statement. Arthur and David are reported to have complained of their injuries, but to have been denied access to a medical doctor. On 19 January, Arthur is believed to have been taken to court on charges of obstruction of justice, for which his sword was allegedly used as evidence. At the trial, he was said to have requested bail and was released on payment of K Sh 30,000. His case was allegedly scheduled for 1 October 1999. David was reported to have been taken to court on 26 January 1999 charged with rape. He is said to have pleaded not guilty and was allegedly released on bail on payment of K Sh 50,000 on 27 January 1999. The date of his substantive trial was reportedly set for 5 October 1999. Arthur and David are said to have received treatment from a medical doctor. They reportedly went to Kikuyu police station on 15 February to request a P3 form, which was allegedly refused

on the grounds that their cases were pending at the time of their request. The KANU Youth Wing members who are said to have come to the house of David's mother are reported to have been arrested for the murder of a 28-year-old man.

66. **Moses Kaporot Ben**, a 39-year-old farmer from Maseek sub-location, Chongewo location, was reportedly severely beaten on 19 January 1999 around 9.30 a.m. by an assistant-chief (whose name is known by the Special Rapporteur) and three of his colleagues who were working on his farm on a new road opening. He was allegedly tied with a rope and beaten by the assistant-chief on the mouth, the chest and the back. He was reportedly released after his friends intervened, and received medical treatment in Kopsilo dispensary.
On 21 January, he reportedly filed a complaint at the Kipsigon police base. The same day, he was reportedly arrested by the Administrative Police and taken to Chelebei Patrol base, which is said to be a room rented by the Administrative Police in order to detain persons. Later that day, he was reportedly transferred to Kopsito police post, where he stayed without being given food for five days. On 22 January, he was reportedly asked why he wanted to beat the assistant-chief. On 25 January, his case was reportedly referred to the Kimilili Magistrates Court in Bungoma district. However, no judge was present. The following day, he reportedly appeared in court and denied the charges brought against him of creating public disturbances. He was reportedly sent to Bungoma prison on remand. On 28 January, he was released on bail. A judgement concerning his case was expected on 21 October 1999. He reportedly received medical treatment from a private doctor working in conjunction with Independent Medical-Legal Unit (IMLU), an NGO, and completed a P3 form (a copy of which is in the possession of the Special Rapporteur) on 31 January 1999. On 11 February, he is said to have returned to Kipsigon police station with two witnesses in order to write a statement. On 3 May, he reportedly wrote a letter to the officer-in-charge of the police station. On 8 June, he is said to have received a response from an officer commanding a police division saying that an inquiry would take place. Since then, it is alleged that nothing has been done by the police regarding his complaint against the assistant-chief and his colleagues.

67. **Gentrix Musuya**, a 25-year-old woman who was eight months pregnant at the time, from Kolongotuy sub-location, Emia location, Mont Elgon district, was reportedly beaten at her home by Administrative Police officers on 29 January 1999. She was reportedly interrogated about some people who were accused of drinking illegally brewed beers. She was allegedly beaten and kicked in the stomach, leading her to miscarry. The following day, she went with her husband to the Kipsigon police station, where she was advised to first get medical treatment, given her poor state of health. She was reportedly treated at the Kopsino health centre and by a IMLU doctor whose reports indicate that she was experiencing pain in her lower abdomen and back, as well as experiencing shock and depression from having miscarried. On 10 February, she filled in a P3 form (a copy of which is in the possession of the Special Rapporteur), which was returned to the police on 18 February. The same day, she wrote a statement at the Kipsigon police station. Since then, she has not heard anything about her complaint, despite the fact that the District Commissioner and the officer commanding a police division promised her that they would follow up her case.

68. In February 1999, a 17-year-old from Nyanza province and his whole class were reportedly subjected to beatings with the cane for alleged under-performance. The 17-year-old was reportedly caned four times while lying on his stomach. He was allegedly grabbed by the

headmaster, further hit on the sides of his head and told to lie down again. He was then allegedly caned on his back, punched and stepped on. Other teachers reportedly started to leave at this point. His back was said to have been bleeding and he was allegedly sick. When he reportedly returned to school, the headmaster was said to have threatened him with more severe beating if he failed or missed a test.

69. **Romano Wasike**, aged 68, was reportedly arrested by six persons in plain clothes on 22 February 1999 around 5.30 p.m. in Mufutu, Bungoma town. He was allegedly beaten with rubber truncheons and was taken to the Bungoma police station, where he was reportedly accused of having beaten a policeman. He was reportedly interrogated for three days by the crime section and then was told to leave. During his detention, he was allegedly kicked and beaten with truncheons each morning and evening, for approximately half an hour at a time. It is reported that he was interrogated by four different police officers, who are believed to have threatened him in order to force him to sign a statement. According to the information received, he finally signed such a statement on 23 February, but was only released on 25 February. The case against him is said to have been dropped by the police.

70. The Special Rapporteur has also received information of alleged violence by security personnel on 22 February 1999 at the Mandizini Estate. According to the information received, on the afternoon of 22 February, several contingents of police arrived at the Estate, purportedly in response to the alleged beating of a police officer there earlier in the afternoon. Thereafter, a reported two-hour reign of terror ensued during which many civilians were reportedly injured. Information was received on the following individual cases:

> **Casiah Mugure**, a 69-year-old woman who owns a food kiosk at Mandizini Estate, was reportedly arrested by two police officers at her kiosk at about 4 p.m. She was reportedly holding a water jug at the time of her arrest and the police allegedly beat her with a club and hit her with a gun on the left side of her chest. She was reportedly detained at the Bungoma police station until 23 February, when she was released.
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> **Amina Raymond**, a 56-year-old housewife at the Mufutu Estate, was reportedly arrested and detained at the Bungoma Police station until 8 p.m. on 22 February 1999. At the time of her arrest, police allegedly beat her on the hips and buttocks using clubs and guns.
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> **Romano Wasike**, a 67-year-old herbalist and farmer, was reportedly approached by a number of plain-clothed police officers at 5.30 p.m. The police officers allegedly beat his back, hands and legs. He reportedly lost consciousness and was then thrown into a police Land Rover. According to the information received, the police also allegedly destroyed his medicine. He was reportedly taken to the Bungoma police station, where he was detained until 25 February. At the station, police allegedly whipped him on several occasions while ordering him to sign two statements alleging that he had incited youths to beat a police officer and had allegedly obstructed police officers from carrying out their lawful duties.
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> **Ali Wafula**, a 42-year-old driver had reportedly just returned to his rented room near the Banana Bar when police allegedly kicked open his front door and allegedly started to

beat him using a rungu (club) and a boot. He was reportedly beaten on his hip, hand, forehead and chest. Thereafter, according to the information received, he was detained at the Bungoma police station until 25 February. He was reportedly released at around 8.20 p.m. on 25 February.

Margaret Agor, a 46-year-old mother was reportedly resting on some grass near a food kiosk when police officers allegedly started hitting her on her hips, hands, shoulders and knees. She was reportedly then thrown into a Land Rover and transported to a police station, where she was said to have been detained for the afternoon. During the alleged detention, she was reportedly whipped with rubber strips. **Jackson Macharia Mugo**, a 34-year-old disabled man, was reportedly arrested, allegedly beaten and detained under the same conditions.

Paul Masiga Nyongesa, a 21-year-old businessman, was reportedly returning home around 5 p.m. when he was allegedly arrested near the Moi primary school by the police. The information received indicates that the police hit him several times on the head with a pistol muzzle, then reportedly beat him with clubs (rungus) before whipping him with rubber strips. He was said to have been detained at the Bungoma police station until 24 February, during which time he was allegedly whipped by police with rubber strips. According to the information received, he apparently has some physical marks on his body allegedly caused by the whipping.

Haji Yusaf, aged 68 years at the time, was reportedly coming back from his rental plot of land opposite Victory Church, when he supposedly met several police officers who allegedly beat him with rungus on several parts of his body. He reportedly lost consciousness as a result and was taken to Mumias Road Nursing Home, where he was reportedly admitted with a fractured head. According to the information received, he later died, on 14 May 1999. A post-mortem examination was apparently performed.

Enock Bukachi, a 28-year-old businessman residing in Mandizini, was reportedly coming home from a video library when he saw police officers allegedly beating someone. He was reportedly beaten with rungus several times on the hand, shoulder and back. According to the information received, he was then thrown into a Land Rover and brought to a police station, where he was reportedly detained until about 6 p.m. on 24 February.

71. **Jane Chasoo**, from Mont Elgon, Kapsokuan district, was reportedly arrested by two police officers while she was returning home with her brother-in-law on 14 March 1999. She was allegedly pinned to the ground and raped in the presence of her brother-in-law. The following day, she reportedly went to Kipsigon police station in order to file a complaint. According to the information received, she was first told to go to the hospital for treatment. When she came back from hospital, a P3 form was completed at the police station. Since then, she reportedly has not received any news regarding her complaint despite repeated inquiries with the District Officer. The officers allegedly responsible for her rape were said to be still on duty.

72. **Isaac Mwaniki Gitari** was reportedly arrested in April 1999 by two officers of the Administration Police and frogmarched to Eldoret police station, where he was allegedly

threatened with a gun and severely beaten. He was eventually released the same day owing to his nephew's intervention. He is said to have collapsed five hours after his release and to have been taken to the Uasin Gishu District Hospital. He is said to have died 12 days later. An autopsy said to have been conducted at the Moi National Teaching Hospital reportedly found the cause of his death to have been a dislocation of his upper cervical vertebrae and compression of his spinal cord. Reportedly as a result of pressure by family and human rights groups, an investigating team was said to have been sent from Nairobi. According to the information received, no proceedings had been instituted against the officers at the time of writing the report.

73. **Duncan Ndegwa**, a policeman attached to the Nairobi Provincial Criminal Investigation Department Headquarters, was reportedly arrested in May 1999 and allegedly severely tortured by members of the "flying squad" based in Pangani. According to the information received, he was questioning the propriety of a person's arrest when he himself was arrested.

74. **Peter Munga** and seven other individuals were reportedly arrested by the "flying squad" in May 1999 at Waithaka. According to the information received, they were taken to Kikuyu police station, where they were allegedly severely tortured. **Tama Kimotho** is said to have died from his injuries and to have been taken to Kenyatta National Hospital mortuary.

75. **David Munyoki** was reportedly beaten to death on 10 May 1999 by residents of Ikanga location in Kitui district who suspected him of having been one of six people who had reportedly broken into the home of a resident at 11 p.m., allegedly beating him with rungus and taking money from him. He was allegedly frogmarched to the resident's home. The villagers were said to have beaten him with whips and sticks His hands were reportedly tied with a rope. On the way to the Chief's camp, he was said to have been continually beaten by a group of young men, who reportedly forced him to sign a confession naming his alleged accomplices. He was reportedly beaten to death and left by the roadside. His body was believed to have only been collected by officers of the Kitui police station at around 4 p.m. the next day. No one had reportedly been arrested by 30 June 1999.

76. On 23 May 1999, officers of the Kenyan army and the police are believed to have jointly attacked herders of the Gabbra community at the Baresa watering point in Marsabit district, bordering Ethiopia. The attack was said to have been a "security operation" by the Kenyan security forces aimed at expelling members of the Ethiopian Oromo Liberation Front who were allegedly staging raids against the Government of Ethiopia from Kenya. Over 70 men were reportedly herded together and stripped naked. Some men were said to have had their testicles pulled, whilst others were reportedly pricked with thorns between their fingers and toes. The military were said to have investigated the matter. At the time of writing the report, the findings of the investigations had reportedly not been made public, nor any arrests made.

77. **Erustus Gakungu Mwangi** was reportedly arrested on 25 May 1999 around 5.50 a.m. by four policemen from Gakoigo police post and taken to Maragwa police station in Muranga district. At the time of arrest, he was allegedly severely beaten. On the following day, his brother is reported to have found his body at the mortuary. According to the information received, the police had taken his body to the mortuary but had registered him under a fictitious name. The police are also said to have claimed that he had been killed by an irate mob.

78. **Jirma Hussein,** a 29-year-old man from Sololo (Obbo) division in Moyale district, was reportedly arrested by a group of plain clothes police officers at 9.30 p.m. on 28 May 1999. At the time of his reported arrest he was apparently attending a funeral. A group of police officers from the Kamukunji police station allegedly then started to beat him. One of the police officers allegedly kicked him on the genitals, causing him to scream in pain while the police officers reportedly laughed. Thereafter, the police officers allegedly pointed their guns at his eyes and threatened to shoot him if he spoke. One of the officers reportedly grabbed him from behind by his belt and, holding the back of his neck, pushed him to walk forward. The officers allegedly ordered him not to look behind and told him that if he did, they would shoot him. When he did reportedly look behind, one of the officers allegedly hammered a gun into his face, causing it to bleed. Later, he was reportedly taken to a house, where police officers allegedly beat him further and jumped on him with their boots. He was later reportedly blindfolded and driven to the Embakasi police station and then the Jogoo police station. He was reportedly beaten and had his testicles pinched until he shouted in pain. He was also reportedly put into a cell and threatened by police officers that they would come the next day to "finish him off". His requests for medical treatment were apparently all denied. On 30 May 1999, he was reportedly threatened that if he did not sign a prepared statement, his head would be shot by a gun placed into his mouth. He was later released after attending court.

79. **Tache Ole**, aged 41, was reportedly arrested by several officers of the Kenyan Wildlife Service (KWS) in the Shambole market, Magadi, Rift Valley province, on 2 June 1999. Two of his friends, **Aleke** and **Abdu**, are said to have been arrested at the same time. They were all taken to Lega market, where they were allegedly beaten on the soles of the feet with a wooden stick. Marks were still visible at the time of the interview (22 September 1999). They were reportedly handcuffed and their legs were tied. They were reportedly surrounded by around 30 KWS officers and left in the sun somewhere on the outskirts of the market. The following morning, around 6 a.m., their feet and hands were tied together from behind and they were forced to lie on their stomachs. They were then allegedly beaten again with wooden sticks. They were kept all the day under the sun. On 3 June, three other persons, **Ibrahim Dabasso, Hussein Malisha** and **Alow Omar** were reportedly arrested and taken to the same place, where they were subjected to the same treatment. On 4 June, **Hassan Mohamed**, a Muslim trader from Lega, was also reportedly arrested by KWS officers and taken directly to the Magadi police station, where he was allegedly severely beaten for half an hour with sticks and truncheons. He was also allegedly kicked in front of police officers, who are said not to have intervened. On 4 June, around 6 p.m., some people, including Tache Ole's wife, took Tache Ole and Ibrahim Dabasso to the Magadi hospital. The others were reportedly taken into police custody at Magadi police station, from where they were directly taken with Hassan Mohamed to Ngong police station. On their way to Ngong police station, it is alleged that Hassan Mohamed was beaten again with gun butts. They were reportedly released on 15 June owing to pressure by human rights activists and the Head of KWS. It is reported that Ibrahim Dabasso died at the Magadi hospital on 11 June, allegedly as a result of the beatings he sustained. Tachole Ole reportedly received medical treatment from the non-governmental organization IMLU for two months. He reportedly had a fracture of his right leg and wounds on the feet, legs and back. He, Hassan Mohamed and Alow Omar are said to have obtained a P3 form. Alow Omar reportedly had a broken right leg and foot. During his detention at the police station, he was allegedly refused medical treatment. All of those detained at the police station were reportedly asked to report weekly to the police. According to them, they had been arrested because

somebody had given KWS their names as persons having guns. They were reportedly interrogated about guns. According to the information received, a senior KWS officer was fired by the Head of KWS and two officers were suspended on 15 June. A letter was reportedly sent to the Attorney-General asking for an inquiry to be opened.

80. **Hassan Mohamed**, 39 years old, was reportedly arrested in early June 1999 by KWS personnel, who allegedly beat him with rifle butts and slapped and kicked him. He was seen by a doctor on 16 June 1999 who reported that he had loin and chest pain, a small wound on his skull and tenderness in the lower abdomen. He also reportedly had traces of blood in his urine and may have been suffering from cystitis. A P3 form was completed by him on 4 June 1999 and is in the possession of the Special Rapporteur.

81. **Olow Chachole**, 41 years old, was allegedly beaten by KWS personnel at Magadi from 2 June until 4 June 1999. He was reportedly admitted to Magadi hospital from 4 to 11 June 1999. There he underwent x-rays and treatment for severe soft tissue damage and a broken bone in his right foot. He completed a P3 form on 19 July 1999 at the Magadi police station; it is in the possession of the Special Rapporteur. According to the P3 form, he sustained bruises to both his wrists, wounds on the soles of his feet and a fractured bone in his right foot, allegedly as a result of the beatings.

82. **Alow Omar Hussein**, 38 years old, was reportedly arrested by KWS personnel on 3 June 1999. According to the information received, he was allegedly beaten by KWS personnel, which reportedly caused numerous injuries to his feet, chest and abdomen. He filled in a P3 form (in the possession of the Special Rapporteur) on 4 June 1999, which details a number of injuries he reportedly sustained, including a fractured fifth metatarsal bone in one of his feet and wounds on both of his feet, allegedly as a result of the beatings.

83. **John Njenga** and seven other men were reportedly victims of a lynching at Kiganjo Ranching Company in the Kimuchu area of Thika district around 11 June 1999. They were reportedly suspected of theft. John Njenga had allegedly been working on a construction site when he was approached by a group of people who reportedly told him to accompany them back to the village. His hands were said to have been tied together with a rope and he was allegedly taken to Muthara primary school playground where he was reportedly ordered to sit on the ground next to seven other men. They were believed to have been questioned by the villagers while being beaten by two men with metal rods, whips and pangas. John Njenga reportedly lost an ear in the attack. Other men reportedly castrated some of the victims with a pair of pliers. They were then said to have piled up the victims and a fourth villager was believed to have poured paraffin over them and set them alight. Seven of the victims reportedly died and John Njenga allegedly survived the attack with severe burns. The police at Juja police station were said to have been informed at 10 a.m. but to have only arrived at 5 p.m., by which time the suspects had reportedly been lynched. According to the information received, no arrests had been effected at the time of the report, despite the fact that the parents of the victims had allegedly written statements and had provided the police with the names of those who were reportedly responsible for the attack.

84. **Issa Suko Abdi** was reportedly arrested on 16 June 1999 on suspicion of murder and detained at the Garissa police headquarters. During the first 12 days of his detention, he was

reportedly not interrogated. On 28 June, he was allegedly interrogated by an inspector of the Criminal Investigation Department, who is said to have tried to extract a confession by beating and slapping him. He was allegedly beaten on the knees, thighs, elbows and back. The inspector is said to have written a statement, which Issa Suko Abdi refused to sign.

85. A student from Eldoret Polytechnic was reportedly battered to death on 18 June 1999 by a gang of touts when allegedly participating in a student demonstration against mass examination failures. Armed policemen reportedly stood by without intervening.

86. **Yakub Farah** was reportedly arrested by four policemen on 19 June 1999 while he was on his way to the mosque in Garissa. He was allegedly severely beaten with truncheons and wooden sticks. He allegedly fell down and was then kicked. According to the information received, he started vomiting blood and was then taken in a police vehicle to the Garissa police station, where he was held in a cell. A police officer reportedly decided to take him to hospital, where he is said to have arrived unconscious. He reportedly recovered consciousness three days later. According to the information received, he was released from hospital one week later and went to the Garissa Nursing Home where he reportedly stayed for 10 days. At the time of the interview (28 September 1999), he was still suffering from headaches, he could not see properly with his left eye, and he was reportedly bleeding from his nose when he bent down. According to medical reports which were shown to the Special Rapporteur, the medical superintendent of the Garissa Provincial General Hospital and a medical doctor from the Garissa Nursing Home concluded that he had sustained injuries consistent with his allegations. According to his testimony, he does not know why he was beaten and then arrested. The officer-in-charge of the police division reportedly informed him that an investigation would be carried out.

87. **Brian Ochieng Uruko**, aged 21, was reportedly arrested in Bungoma town by the police on 8 July 1999 during a taxi (Matatus) strike. He was allegedly severely beaten by five policemen with wooden and metallic truncheons. He was reportedly then taken in a Land Rover to the police station at Bungoma, where he was lined up with 15 other persons who had been arrested at the same time. They were allegedly all beaten. He was reportedly accused of causing a public disturbance and of having thrown stones at the police. He is said to have signed a statement at this time. He was then reportedly put into an overcrowded and very hot cell. The following day, he was reportedly brought to court. He was released on bail. It is reported that during the same incident two persons, **Aboubaka Musikoye** and **Jacob Masete**, died. According to the information received, the police declared that they had died because of the conditions of detention, while other persons detained at the same time allegedly claimed that they had died from injuries sustained at the time of arrest. Both were said to have been bleeding from their heads and their bodies reportedly bore marks of injuries. A post-mortem examination by IMLU is said to have discovered blood in the brain due to injuries, and internal bleeding in the stomach. Their families are believed to have been harassed by the police and were offered money not to file a complaint.

88. **Jane Muthoni Maina** was reportedly assaulted by the Assistant Chief at Ol-Kalou on 10 July 1999. She was allegedly beaten and thrown to the ground. As a result, her chest and right hand were reportedly seriously injured. On 20 July 1999, she reportedly went to Ol-Kalou

police station. A P3 form is said to have been completed by a doctor and to have been given to a police officer. According to the information received, she was later informed that the Assistant Chief could not be prosecuted as he was a senior public officer.

89. **Evans Simiti** and his brother, **Joseph Wahongola**, were allegedly beaten on 18 July 1999 by police officers at the market of Kapkaten while they were chasing one of their cows which had been given to them by their brother-in-law as dowry and had now escaped. They were then reportedly taken to the police station, where they were beaten with truncheons for around an hour, by four police officers. They were reportedly put into a cell, from which they were released in the evening of the same day. On the following day, they reportedly went to Bungoma hospital where they received medical treatment. Evans Simiti is said to have broken one of his fingers on his left hand. The two men are said to have tried to file a complaint at the police headquarters of Kapsakwany, Mont Elgon district. It is reported that no one would listen to them. On 4 August, under pressure from a non-governmental organization, the officer commanding the police division in Kapsakwany is said to have agreed to open an inquiry and he also recorded statements of the alleged victims. It is reported that when they went to the hospital to get a P3 form, the police officer accompanying them spoke with the medical doctor before they could see him. According to them, when the doctor finished his conversation with the police officer, he asked both of the alleged victims for 1,400 Kenyan shillings to get a P3 form. The four police officers allegedly involved in this incident are reportedly still working at the police station.

90. **Anastasia Wariera** was reportedly arrested on 25 July 1999 at around 8 a.m. in Gong by two police officers on suspicion of theft. She was reportedly not taken to the police station, but to a bush close to her house, where she was allegedly severely beaten with sticks and plastic truncheons on the legs and arms all day long. At the time of the interview (29 September), marks, in particular an open wound on the upper part of the right leg, consistent with her allegations were still visible. She was eventually taken to the police station at night. The officer-in-charge is reported to have sent her to the Kenyatta Hospital, where she was reportedly treated for two days. She is said to have complained about the beatings to the officer-in-charge, who reportedly suspended the two officers. On 28 July 1999 she gave her statement and on 3 August 1999 she reportedly handed in a completed a P3 form to the officer-in-charge (a copy of which is in the possession of the Special Rapporteur). It is not known whether an investigation was opened.

91. **Omar Sharif Ali** was reportedly arrested on 5 August 1999 by the police at Madoga, Tana River District on suspicion of having stolen shoes and detained at the local police station for two days. During his interrogation, he was allegedly beaten, slapped and whipped for half an hour. Marks on his hands, arms and upper thighs which were consistent with his allegations were still visible at the time of the interview (28 September). He was reportedly forced to sign a statement, which was not read to him despite the fact that he could not read. He was then reportedly transferred to Garissa court, where he pleaded not guilty and was immediately put on remand at Garissa GK Prison. He went to court a second time on 24 September. In the prison dispensary, he is said to have been given painkillers, but to have subsequently been told that he had to pay to receive them.

92. **Peter Mwangi Karanja** was reportedly arrested on 31 August 1999 in Langalanga, Nakuru town and taken to Nakuru Central police station. It is said that he was suspected of attempted robbery. According to the information received, he stayed there for 10 days without being interrogated and was transferred to Bodeni police station on 10 September 1999. On 12 September, he was allegedly beaten on his chest and knees with truncheons by police officers in order to extract a confession. He was allegedly also hit on the right side of his head with a shoe. At the time of the interview (25 September), marks consistent with these allegations were still visible. After this interrogation, he is said to have agreed to sign a statement declaring that he had attempted to knife somebody. He was reportedly produced in Nakuru court on 13 September, but was not able to complain about the ill-treatment to which he had allegedly been subjected. He was reportedly unable to pay his bond. He intended to complain to the magistrate at the next hearing, which was due to be held on 27 September 1999.

93. **Patrick Kamau Chege** was reportedly arrested in Molo between 6 and 8 p.m. on 2 September 1999. He was said to have subsequently been taken to Molo police station. At midnight, he was allegedly transferred to Leburgon police station by plain clothes police officers and from there to the police headquarters. Patrick Kamau Chege was said not to have been aware of the reason for his arrest. At 10 p.m. the following evening, he was reportedly forced into a car boot and taken to identify a person who he allegedly had never seen before. Subsequently, the police are said to have released a police dog to attack Patrick Kamau Chege and the other person. The dog reportedly bit their legs and testicles. Patrick Kamau Chege was allegedly placed in the vehicle and taken back to Molo police station where he was said to have been beaten with sticks. He was reportedly subjected to continuous beatings until 6 September, aimed at his joints, toes and ribs. He was also allegedly stripped naked and had his hands tied behind his knees. He was reportedly first presented to a magistrate on 10 September 1999. The magistrate ordered him to be taken to hospital; he was said to have been brought to a clinic and the clinical officer reportedly sent him to hospital. He was reportedly placed on remand and charged with robbery with another group of people despite a reported absence of evidence. During his reported presence in the police lock-up, his family is said not to have been allowed to have access to him.

94. **Abdulrashid Hassan** was reportedly arrested on 3 September 1999 on suspicion of having abused a nurse and detained at Garissa police headquarters. According to the information received, he was beaten several times while being interrogated. He was also slapped and kicked in the cell. He was allegedly subjected to this treatment for five consecutive days. On 13 September, he was reportedly taken to court where, after having been charged, he was transferred to Garissa GK Prison on remand. He returned to court twice and, according to the information received, his case was listed for hearing on 14 October 1999. He is suffering from tuberculosis, information which is noted in the prison cells register. But he is said not to be receiving any drugs despite his requests.

95. **Abubakar Abdi Noor**, a member of the Ogaden clan, was reportedly arrested on 7 September 1999, according to the cells register of the Garisssa police headquarters where he was detained and where the Special Rapporteur met him on 28 September. He was allegedly beaten with sticks, kicked and lashed while he was interrogated about a weapon he claims to have returned to the police. According to the cells register, he was detained on suspicion of robbery with violence. He was allegedly subjected to such beatings every day. The occurrence

book indicates that Abubakar Abdi Noor was taken from his cell several times for the purpose of interrogation by various Criminal Investigation Department (CID) officers. Upon each return from the CID office, a mention "appearing normal and no complaint" had been written down next to his name. He also believed that he may have been subjected to this treatment because of his membership of the Ogaden clan. At the time of the interview, he was bearing visible marks of torture, including open wounds and haematomas, on the right leg and buttock, consistent with his allegations. Throughout his time in detention, he was reportedly never taken to court. According to the information received, on the morning of 27 September 1999, the day on which the Special Rapporteur started his visit to the Garissa police headquarters, he was taken by the head of the CID to the Chief's office. According to the cells register, he had been taken to court on that day. On the evening of 27 September, he was reportedly taken to another location, where a CID officer allegedly kept watch on him. At 2.30 a.m. on 28 September, he was eventually produced before the Special Rapporteur. According to the information received, he was taken to the hospital on the morning of 28 September and received medical care. He was then taken back to the cell. He was supposed to be taken to court on the same day or released.

96. **Gibson Musungu** was arrested on 15 September 1999. He was reportedly brought to Nakuru police headquarters. A central police officer allegedly borrowed K Sh 250 from him to pay for dental work. This police officer is said to have subsequently threatened Gibson Musungu with disappearance. Allegedly, his relatives were not informed of his detention. He was reportedly subjected to beatings in the Criminal Investigation Department office at the police headquarters. He was allegedly kicked in the head and ribs with boots, whipped, beaten on his back and punched on the jaw, which reportedly led to headaches and to a broken tooth. On 22 September, he asked to be taken to hospital. He was allegedly informed by the clinical officer that an appointment had been booked. He was reportedly presented to a judge after one week in prison and was allegedly informed that he would be given bail, monitored from the outside and that he would be able to get medical attention. Instead of being released, Gibson Musungu was allegedly brought to Nakuru GK Prison for a probation officer to see him and, at the time of the Special Rapporteur's visit, he had allegedly been in detention there for approximately one week.

97. **Mary Njeri**, aged 17, and **Zippora Ndiko**, aged 15, were reportedly arrested on 17 September 1999 on suspicion of having participated in a carjacking. They were allegedly found in the stolen vehicle and taken to Mutarakwa police post. According to the information received, they were beaten with sticks while being interrogated about the whereabouts of the carjackers. They reportedly informed police officers that Zippora Ndiko had been raped by one of the carjackers and needed appropriate medical treatment. The following day, they were said to have been taken to Tigoni police station, where they allegedly requested medical attention, without success. They were interrogated and beaten with hoe sticks on the knees and feet by three policemen. A policeman is said to have stepped on Mary Njeri's neck after she was allegedly made to lie on the floor. Zippora Ndiko was reportedly sexually abused by a policeman and was allegedly forced to have oral sex with some others. The following day, the officer-in-charge of the police station reportedly intervened and the beatings consequently stopped. On 19 September, Mary Njeri and Zippora Ndiko were reportedly transferred to Kikuyu police station. During all their detention, they have reportedly never seen a magistrate and Mary Njeri's family was apparently never informed of her arrest.

98. **Augustin Tuna Kimari** was reportedly arrested at his home at around 6.30 a.m. on 17 September 1999 by members of the so-called “flying squad”. His arrest is confirmed in the occurrence book, which was seen by the Special Rapporteur. He was reportedly accused of having stolen cars. He was reportedly taken to Nakuru Central police station where he was allegedly interrogated and beaten with a metal rod on his knees, ankles and elbows. At the time of the interview (26 September), marks consistent with his allegations were still visible. He was also allegedly slapped on his face and on other parts of his body. He was reportedly not able to walk properly after this interrogation session and is said to have been denied medical treatment. He is also said to have been denied access to a lawyer and to see members of his family. On 24 September, he was allegedly transferred to the Menengai police station, where he was reportedly left in a cell without being interrogated or brought to a magistrate.

99. **Tari Godana Gababa** was reportedly arrested on 20 September 1999 in Olrongai by police officers from Menengai police station on suspicion of having stolen a bicycle. He was allegedly severely beaten with sticks for approximately half an hour at the time of arrest. At the time of the interview (26 September), marks consistent with his allegations were still visible on the left side of his back. Other persons arrested at the same time were reportedly released after having paid a bribe. He was allegedly denied medical treatment, but he reportedly did not complain about the beatings he was allegedly subjected to.

100. **Joe Cosmas Kiplagat Birir** was reportedly arrested at around 7.30 p.m. on 21 September 1999 by two teachers at the Kabarak high school in Olkilge, Nakuru town, who had asked him to buy something for them. He is said to have been taken in a taxi to the Menegai police station. It is reported that he was severely beaten in the taxi. According to the information received, he was beaten especially on the chest, with a piece of metal found in the taxi. He is said to have been vomiting blood in the taxi and upon his arrival at the police station. The beatings are reported in the occurrence book at the police station. At the time of the interview (26 September), marks on his body, particularly haematomas, consistent with the allegations, were still visible. No medical attention was reportedly provided to him. He was allegedly deprived of food for the following three days. He was reportedly not interrogated, however, and reportedly no action was taken against the two teachers allegedly responsible for the beatings.

101. **Lokolina Kalore** was reportedly arrested on suspicion of robbery with violence on 15 September 1999 by Rongai police officers, who are said to have severely beaten him. He was reportedly transferred from Rongai police station to Njoro police station the same day. According to the information received, he was in a very bad condition when brought to Njoro police station. The occurrence book, however, indicated that he was physically fit.

102. **Paul Karigo** was reportedly arrested on 20 September 1999 and directly taken from Industrial Area to Njoro police station. The following morning, he is said to have been interrogated in the crime office and to have been severely beaten for approximately half an hour with a rubber whip on the soles of his feet and on his shoulders. At the time of the interview (26 September), marks consistent with his allegation were still visible. He was also allegedly subjected to death threats. He was reportedly not presented to a magistrate.

103. **Ali Mohammed Mussa** was reportedly arrested on 21 September 1999 by his partner, a Garissa police constable and detained at the Garissa police headquarters, where the Special Rapporteur met him on 28 September. During interrogation, he was reportedly beaten, in particular on his private parts. On 24 September and on two other occasions, he was allegedly blindfolded and taken to the bush where gunshots were fired over his head. On the morning of 27 September, the day on which the Special Rapporteur started his visit to the Garissa police headquarters, he was reportedly taken by the Head of the CID to the Chief's office. No mention of his whereabouts appeared in the cells register next to his name. In the late evening of 27 September, he was eventually produced before the Special Rapporteur and gave him information on Abubakar Abdi Noor, who had been hidden with him, despite threats that he should not speak to the Special Rapporteur. According to the information received, he was released by the Officer-in-charge of the Police District the following morning.

104. **Julius Odhiambo Odienja** was reportedly arrested on 22 September 1999 and taken to Menengai police station, where he is said to have stayed for two days before being transferred to Njoro police station. According to the information received, he was severely beaten in the criminal investigation room of Menengai police station. His hands were allegedly tied with an electric cable between his legs and he was severely beaten with sticks on his back, shoulders, chest, legs and feet, while he was reportedly interrogated about a gun. The officer-in-charge of the station is said to have asked him to jump like a frog, which he reportedly could not do owing to the pain. He was beaten again in the cell because of a misunderstanding over his name.

105. **Benjamin Etabo William** was reportedly arrested on 21 September 1999 on suspicion of having stolen a chicken and taken to Menegai police station, where he was allegedly severely beaten by four policemen with wooden sticks and a rubber hose for approximately half an hour. He was also allegedly punched in the right eye.

106. **Robert Exeno Lokwani, Alex Otwari Pundi, Kennedy Kipsang Peter, Moses Lombanyi Wambari,** and **Bernard Mbugua Ndungu alias Waria** were reportedly arrested on 21 and 22 September and transferred to Njoro police station after having been subjected to similar treatment as Julios Odhiambo Odienja (see para. 104 above) at Menengai police station. The Special Rapporteur could not interview them since, owing to their very serious state of health, they had all immediately been taken to hospital.

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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF TORTURE AND DETENTION

Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1999/32

Addendum

Communications received from Governments between 15 December 1999 and 15 February 2000

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Introduction

1. The present document contains all government replies received by the Special Rapporteur between 15 December 1999 and 15 February 2000. It is being issued on an exceptional basis to remedy the fact that, owing to the late dispatch of several regular communications, mainly in English, Governments did not have sufficient time to respond to allegations. The Governments concerned were informed of the intention to issue the present addendum by letter dated 24 January 2000, in which they were requested to send outstanding replies by 15 February 2000 in one of the three working languages of the Office of the United Nations High Commissioner for Human Rights. The purpose of this exceptional request was to ensure that they could be circulated during the Commission session in an informal document, the present addendum in the six official languages of the United Nations only being issued after the session, because of the lateness of submission. Replies to communications sent earlier by the Special Rapporteur that were received after the completion of the main report have also been included in this addendum.

Australia

2. The Government reported that the case of the Libyan asylum-seeker and his family (see E/CN.4/2000/9, para. 31) was currently under consideration by the Department of Immigration and Multicultural Affairs and that it would inform the Special Rapporteur of the outcome of the process.

Azerbaijan

3. By letter dated 5 January 2000, the Government responded positively to the request of the Special Rapporteur to undertake a fact-finding mission to the country.

Chile

4. By letter dated 10 January 2000, the Government responded to one of the cases transmitted by the Special Rapporteur on 8 October 1999 (see E/CN.4/2000/9, para. 182).

5. The Government stated that in February 1999 the inmates of the Colina I high security prison had been transferred elsewhere temporarily so that the damage they had done to the prison could be repaired; in the course of the preparatory arrangements and actual transfer process members of the Gendarmeria, owing to the resistance of the inmates, used deterrents such as handcuffs and tear gas, injuring some of them. Marcelo Gaete Mancilla's head injury was the result of his detention by members of the Carabineros de Chile. As for Guillermo Ossandón Cañas, it is stated that, like the other inmates, his injuries were the result of his resistance. The relatives of the inmates lodged a complaint with the sixth civil court of major jurisdiction of Santiago against the National Director of the Gendarmeria de Chile and the Chief of Security; proceedings were suspended for want of evidence. They then initiated amparo and protection proceedings before the Santiago Court of Appeal, but their appeal was rejected. An in-house administrative investigation concluded that the staff had acted in accordance with established procedures.

Cuba

6. By letter dated 15 February 2000, the Government responded to various cases that the Special Rapporteur had transmitted to it on 12 October 1999.

7. Concerning Milagros Cruz Cano (see E/CN.4/2000/9, para. 337), the Government reported that he had been arrested for a breach of the peace in Havana on 27 November 1998 and brought before the relevant police examining body by which he was warned and fined. The investigation conducted by the Ministry of the Interior found that he had not been ill-treated. According to available information, he obtained a visa and left for the United States on 19 October 1999.

8. Concerning Lázaro Constantín Durán (ibid., para. 338), the Government stated that he emigrated to the United States in 1980 but was deported since he was considered to be undesirable by the United States emigration authorities. Owing to his anti-social conduct and participation in several breaches of the peace he was sentenced by the Havana municipal court to four years' imprisonment, which he began serving on 19 December 1998.

9. The Government stated, in connection with Pablo Fidel Cabrera Bishop (ibid., para. 339) who had a criminal record, that in 1994, when trying to leave the country illegally in order to proceed to the United States, he was intercepted and turned back by the United States authorities. He returned on 28 December 1994, and was imprisoned as a fugitive from justice.

10. Concerning Juan Carlos Herrera Acosta (ibid., para. 340), the Government reported that he has been serving a sentence in the Guantánamo provincial prison since October 1997 for the offence of illegal departure from the country, and added that his conduct is bad.

11. Salvador Tamargo Jerez (ibid., para. 342) was, according to the information provided, sentenced on two occasions to imprisonment, which will end in November 2001, for the offences of causing serious injury and breaking out of prison.

12. Concerning Virgen Milagros Grillot and Ernesto Gala García (ibid., paras. 341 and 338), the Government stated that the law enforcement agencies of the Republic of Cuba have no information about these cases.

France

13. By letter dated 23 December 1999, the Government replied to the allegations transmitted by the Special Rapporteur on 3 September 1999.

14. Concerning the asylum-seekers who arrived in Nouméa in November 1997 (see E/CN.4/2000/9, para. 443), the Government confirmed that about 70 Chinese whose requests for asylum had been rejected by the authorities had taken refuge on the roofs of the buildings in which they had been housed in March 1998. Armed with knives and iron bars, they threatened to blow the buildings up with gas containers. In the circumstances, and in view of the

physical resistance they put up, the order was given to dislodge them by force. However, the Government made it clear that this operation had involved only the means strictly necessary and commensurate with the circumstances. Furthermore, this incident had no (legal) repercussions.

15. Concerning Yogeswaran Narendran, Thirnagnam Thavandi and Mylvaganan Arwanan (ibid., para. 444), the Government stated that after their request for asylum had been rejected, it was decided not to admit them to the territory. Since they refused to comply with this decision they had been obliged to embark. However, the Government denied allegations of ill-treatment. An administrative investigation into the facts revealed that the police officers could not be faulted in any way for the performance of their functions.

16. Concerning the questioning of trade union members in Papeete in September 1995 (ibid., para. 445), the Government indicated that an investigation into the circumstances surrounding their questioning by gendarmes had not so far resulted in any charges being brought.

17. Concerning Abdelkrim Boumlik (ibid., para. 446), the Government confirmed that his parents had lodged a complaint on 2 May 1996. The investigation entrusted to the Police Disciplinary Body (IGPN) revealed that the versions of the facts presented by the police officers and by Abdelkrim Boumlik were contradictory and that, in the absence of objective evidence and a medical examination during the period of detention, it was impossible to determine the origin of his injuries which, according to his first hearing, were the result of falling off his motorbike. On 7 April 1999, the examining magistrate of the Pontoise court of major jurisdiction issued a dismissal order. The Indictment Division of the Versailles Court of Appeal is at present considering an appeal by the party bringing the criminal indemnity action.

18. Concerning Ahmed Hamed (ibid., para. 447), the Government confirms the facts but adds that he had resisted being taken in for questioning following a complaint by the victim of a theft who had indicated him as the person responsible. The Government explained that on 22 October 1997 the Director-General of the National Police had ordered an administrative investigation of this case by the Police Monitoring Service. No professional misconduct could be attributed to the four police officers concerned and as a result the case had been closed by IGPN. No disciplinary sanctions were therefore imposed.

19. Concerning Djamel Bouchareb (ibid., para. 448), the Government indicated that, on 2 November 1998, a police officer was charged with using unlawful violence although no judicial supervision measures were ordered. However, the Government explained that the charge was unrelated to the accusation of torture within the meaning of article 221-1 of the Penal Code.

20. Concerning Claude Serre (ibid., para. 449), the Government stated that, following a dispute with parking police officers, he had been questioned, handcuffed and taken to a hospital in order to determine his blood alcohol level. During the investigation, Claude Serre had, according to the Government, admitted that he had resisted being taken in for questioning and had added that the police officers had not deliberately used violence against him. The Bobigny Procurator had therefore closed the case.

21. Concerning Tarek Said (ibid., para. 450), the Government indicated that his allegations were being investigated, that a rogatory commission had been addressed to the Police Monitoring Service and that no charges had so far been brought.

Georgia

22. By letters dated 21 December 1999 and 11 January 2000, the Government sent information concerning the allegations transmitted by the Special Rapporteur in November 1999.

23. The Government also informed the Special Rapporteur that 1,654 complaints had been examined by the Central Apparatus for the Inspection of Staff in 1998 and that 202 police officers had subsequently been removed from their position. In particular, five were expelled for exceeding their authority and for physical abuse and four had received prison sentences.

24. Concerning Aka (Alexander) Sulava (see E/CN.4/2000/9, para. 455), the Government indicated that he had lodged a complaint against three unknown persons with the Chief Department of the Police on 1 February 1999. Criminal proceedings were instituted with the Didube District Department on 7 April 1999. The preliminary investigation was eventually ended on the grounds that Aka Sulava failed to name the persons he incriminated.

25. Concerning Josef Topuridze (ibid., para. 456), the Government reported that he had lodged a complaint with the Procurator of Tbilisi against two officers of the traffic police, alleging that they had physically abused him. He had complained to a senior official at the headquarters of the traffic police, by whom he was verbally abused. The case was transferred by the Ministry of the Interior to the Procuracy of the Isani district, which subsequently declared the complaint invalid. Criminal proceedings were instituted against the traffic police and against Josef Topuridze for purposely giving false evidence. The latter has initiated further proceedings for damages, which are currently ongoing.

26. Concerning Badri Tsindeliani (ibid., para. 457), the Government indicated that criminal proceedings had been instituted in the Procuracy General of Georgia on 7 October 1997 which had led to the finding that he had been physically abused by the inspector of the investigation department, a police lieutenant and a lieutenant junior. According to the Government, he had been beaten with a belt and a blunt object on his feet and other parts of his body and had sustained blows to his face, eyes and ears, as a result of which he had lost consciousness. Subsequent proceedings instituted in the Signani District Court had found the three police officers in breach of provisions of the Criminal Code of Georgia. On 3 February 1998, the Prosecutor General had appealed to the head of the Tsoni Police Department of the Ministry of Internal Affairs to take measures to eliminate the facilitation of the conditions for crime conducted by policemen of the same department, inter alia by one officer who had also been on duty when Badri Tsindeliani was assaulted.

27. Concerning Gogi Shiukashvili (ibid., para. 458), the Government indicated that his mother had lodged a complaint with the Prosecutor General on 8 May 1998. On 7 October 1998, the criminal proceedings were referred to Gldani District Procuracy for further investigations and from 27 January 1999, criminal proceedings pursuant to article 187, part 3 (excess of authority)

of the Criminal Code had been conducted at the Tbilisi Procuracy. According to the Government, the investigation had been prolonged mainly because of the contradictory evidence provided by Gogi Shiukashvili, who had stated on 22 June 1999 that he had been periodically tortured by 20 persons whilst in preliminary detention, but had been unable to identify them. In a note to the Tbilisi Procuracy dated 2 September 1999, he indicated that he had been physically abused by the policemen who had brought him to the Gldani District Department. He had undergone a medical examination at the court on 27 August 1998 which led to the conclusion that the injuries to his face were too old for any conclusions to be drawn. The Government stated that in subsequent interrogations, police officers, fellow inmates and Gogi Shiukashvili himself had denied that beating and torture had taken place. On 16 August 1999, the case was dropped on the basis that no person had been identified against whom criminal proceedings could be instituted.

28. Concerning Malkhaz Kumsiashvili (ibid., para. 459), inquiries had been made by the Ministry of Internal Affairs, as well as the Tbilisi Procuracy, into his allegations of ill-treatment. On 4 September 1998, criminal proceedings were not proceeded with, on the grounds that there existed no signs of the crime. On 14 September 1998, the Procuracy of Georgia repealed the previous decision and reinstated the proceedings with special directions. According to the Government, the preliminary investigation eventually ended on 20 September 1998, due to the fact that Malkhaz Kumsiashvili had left Tbilisi and had avoided any further investigation.

29. Concerning the death of Sergo Kvaratskhelia (ibid., para. 460), the Government reported that, on 8 March 1998, criminal proceedings had been instituted in the Procuracy of the Tsalendjikha region for aggravated murder. Five people had subsequently been sentenced to between 10 and 15 years for kidnapping and murdering him with extreme cruelty and provoking mass disorder. One person was sentenced to "compulsive medical means of suppression". Five other persons are currently being sought for kidnapping.

30. Concerning Levan Gagua (ibid., para. 461), the Government indicated that criminal proceedings regarding a premeditated murder had been instituted against him and others on 17 March 1998 in Tbilisi Saburtalo District Procuracy and that he had lodged a complaint with the Ministry of Internal Affairs and the Saburtalo District Procuracy against members of the Saburtalo Police Department and the Chief Police Department in Tbilisi. On 19 June 1998, the District Procuracy refused to institute criminal proceedings on the grounds that there existed no corpus delicti. This decision was subsequently affirmed by the Procuracy of Georgia. Levan Gagua was sentenced to 10 years' imprisonment for premeditated murder by the Supreme Court of Georgia.

31. Concerning Jemal Teloyan (ibid., para. 462), the Government indicated that his complaint invoking extortion, unlawful detention and maltreatment had not led to the institution of criminal proceedings by the Tbilisi Procuracy due to the absence of a corpus delicti. This decision was further confirmed by the Procuracy of Georgia.

32. Concerning Jaba Ioseliani and 13 other defendants (ibid., para. 463), who had claimed to have been beaten or otherwise subjected to ill-treatment during interrogations in pre-trial

detention, the Government reported that they had been visited by the trial Deputy Procurator General and the Deputy Secretary of the National Security Council of Georgia and questioned about physical abuse. All the defendants but one had denied having suffered any physical abuse. After their initial allegations of ill-treatment, the court had commenced an investigation which found that there existed no indications of torture.

India

33. By letter dated 22 December 1999, the Government responded to a case which was transmitted by the Special Rapporteur on 11 November 1998 (see E/CN.4/1999/61, para. 306).

34. Concerning the death of Dilip Kumar Chakravarty, 10 police officials were arrested, charged, suspended from office and held in judicial custody. Compensation of Rs. 2,00,000 has been paid to his widow. Upon order of the National Human Rights Commission, the amount is eventually to be recovered from the police officers found responsible. Charges against an Assistant Commissioner of the police were discontinued due to the absence of corroboration by a prosecution witness. Further petitions by his widow to the Sessions Court and a subsequent appeal to the Delhi High Court were dismissed on 3 March 1998 and 16 April 1998 respectively. A Special Leave petition against the order of the Delhi High Court is currently pending before the Supreme Court of India.

Indonesia

35. By letters dated 23 December 1999 and 11 January 2000, the Government reported that, in an effort to promote national reconciliation based on democracy and respect for human rights, it had amnestied and dropped criminal charges against 196 persons, inter alia from the provinces of Papua, also known as Irian Jaya, Aceh and East Timor. All political prisoners are said to have thus been released. The Government enclosed the names of persons released.

Israel

36. By letter dated 20 December 1999, the Government responded to an urgent appeal sent by the Special Rapporteur on 7 December 1999 regarding draft legislation recently submitted to the Knesset on the interrogation methods of Israel's Security Agency (see E/CN.4/2000/9, para. 656).

37. According to the Government, the draft legislation on Criminal Procedure (Powers and Special Interrogation Methods for Security Offences) (1999), which was introduced as a private member's bill, was neither sponsored nor supported by the Government. Furthermore, the Government had initiated a draft bill in October 1999 which foresaw the amendment of the Penal Code by introducing a new article (article 277A) rendering the infliction of torture as defined in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment a criminal offence punishable by a 10-year term of imprisonment or, where the torture resulted in an aggravated injury, a term of 20 years. According to the proposal, a public official who does not reasonably act to prevent the infliction of torture of which he possesses knowledge, is liable for a 3-year term of imprisonment.

38. With respect to the ruling of Israel's Supreme Court in September 1999, the Government noted that while the Supreme Court ruling prohibited in absolute terms the use of the practices in question, it did not prohibit the possibility of enacting legislation which would infringe upon a suspect's liberty, as long as it complied with the requirements of Israel's Basic Law, that is to say with the "values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required". Finally, the Government indicated that it would study the recommendations of the Special Governmental Committee, which was headed by the Deputy to the State Attorney and the Deputy to the Attorney-General and which had been appointed to examine means of implementing the aforementioned Supreme Court ruling.

Japan

39. By letter dated 15 February 2000, the Government responded to cases transmitted by the Special Rapporteur on Torture in November 1999.

40. Concerning Kazuo Uchiyama (see E/CN.4/2000/Add.1, para. 677), the Government stated that he had been sentenced to two years' imprisonment with labour on 7 September 1993, a sentence which he did not appeal. He was transferred from Chiba prison to Fuchu prison on 21 October 1993 and released from there after the expiration of his sentence on 7 September 1995. On 30 August 1993, the superintendent had reprimanded him in the presence of another officer for a disciplinary offence, to which he had reacted angrily. According to the Government, Kazuo Uchiyama subsequently shouted at the superintendent and attempted to punch him. He was restrained with metal handcuffs behind his back by the superintendent and other officers. He was then taken to a protection room. The Government stated that protection rooms have a window which cannot be opened and no furniture, apart from a water faucet, toilet and ventilating fan, so as not to endanger the inmate's life. According to the Government, he continued struggling and screaming. He was then restrained with his face down and placed in leather handcuffs consisting of two leather rings attached to a leather belt around the waist which fixed his right hand in front of his body and his left hand behind his back. He was placed in mataware pants for his own convenience. The Government asserted that the prison staff had used only the minimum force necessary to protect themselves and to maintain order in the communal life of other inmates. On 29 November 1993, Kazuo Uchiyama filed a lawsuit for damages at the Chiba District Court for assault by Chiba prison officers. According to the Government, he sent a letter withdrawing the lawsuit to the Chiba District Public Prosecutor's Office on 16 December 1993. On 7 March 1996, he filed a renewed lawsuit for damages, alleging that he had been assaulted by the officers at the Chiba District Court. His case was pending at the time of the government reply.

41. Concerning Yoshitaka Hiura (ibid., para. 678), the Government stated that he had been sentenced to five years and six months' imprisonment with labour on 10 April 1991 for a drugs offence. His appeal was dismissed on 28 October 1991 and he was transferred from Tokyo Detention House to Yokohama Prison on 6 December 1991. The Government indicated that during his detention he had been punished with solitary confinement several times for periods varying from 10 to 40 days. On several occasions, he was also restrained with leather handcuffs and detained in a protection room. The Government provided the Special Rapporteur with specific details on each of these punishment periods. The Government stated that Yoshitaka Hiura had not been placed in solitary confinement for minor infractions but that he

was not suitable for group treatment. The prison authorities had carefully examined each time the necessity of placing him in solitary confinement and had only used force against him, applied handcuffs and placed him in the protection room, in compliance with laws and regulations, when he was likely to act violently and injure himself. Yoshitaka Hiura filed a suit at the Tokyo District Court which was rejected on 25 February 1999. He appealed and the case was pending at the Tokyo High Court at the time of the government response. He also filed a complaint with the Yokohama District Public Prosecutor, who decided on 10 December 1999 not to institute proceedings.

42. Concerning Zhou Bizhu (ibid., para. 679), the Government stated that she had been detained in the Tokyo Detention House on 2 April 1997 as a defendant accused of violating immigration laws. On admission to the detention facility, she underwent a medical examination by a doctor and was informed about the procedures for receiving medical care. The procedures entailed that every detainee was asked twice a week whether they wanted to see a doctor and that doctors could be seen any time. The medical examination found inter alia that Zhou Bizhu was suffering from stomach pains and serious vomiting caused by her pregnancy, but that she was not suffering from abdominal pain. The doctor recommended that she should be fed by intravenous drip infusions. On 3 April 1997 she was given three intravenous drug infusions. The intravenous cannula was removed on the same day upon her request not to be given further infusions. On 4 April, Zhou Bizhou was placed on a normal diet and infusions were no longer found to be necessary. On 6 April, she complained of a pain in her lower back and diarrohea. Her doctor advised that she should be kept under continuous observation. At the Kukuyabashi Gynecological Hospital she was told by a doctor that the heartbeat of her foetus could not be felt. A subsequent ultrasonic tomography and a urine test at Shorakudo Hospital led to the diagnosis of possible foetal death, which was subsequently confirmed by a further examination on 25 April. On the same day, her sentence was suspended and she was released from Tokyo Detention House. Zhou Bizhu is suing the Tokyo Metropolitan Government as well as the Tokyo Detention House for medical negligence in relation to the treatment administered and the examination received at Kikuyabashi jail. Her lawsuit for damages was still pending at the Tokyo District Court at the time of the government reply.

43. Concerning Yahaya Radwan Allam (ibid., para. 680), the Government stated that he had complained about an itch affecting his whole body on 20 September 1993, diagnosed as "most probably scabies", for which he had received medical treatment and from which he had completely recovered by 6 January 1994. He was moved from his cell to another single cell on 27 October 1993 for the purpose of interrogation in solitary confinement after he had been caught talking with another detainee in an adjacent cell. The Government denied that he had been placed in an unsanitary cell since cells were cleaned by inmates themselves and prison staff, pursuant to the Prison Law, and since intensive sterilization could be carried out on request. On 17 March 1994, he separated bound legal documents into volumes without submitting a request form to the prison authorities as required, thereby committing a disciplinary offence. He was reprimanded and shortly thereafter threatened prison officers, who subsequently restrained him and placed him in a protection room for one day. He saw a doctor during and after confinement in the protection room who found abrasions on his left arm and bruises on the left side which seemed consistent with the force used. No other injuries were found. The Government stated that he had complained of pus and decreased audibility in his right ear on 10 December 1993. He had subsequently been diagnosed by an

otorhinolaryngologist with otitis externa in his right ear. He is pursuing a lawsuit for damages, which was pending at the Tokyo District Court at the time of the government reply. He also filed a complaint with the Tokyo Public Prosecutor's Office, which decided on 12 July not to prosecute. A request for an appeal hearing was dismissed by the Tokyo District Court on 8 August 1995.

Malaysia

44. By letter dated 4 February 2000, the Government sent information concerning the allegations transmitted by the Special Rapporteur in November 1999 (see E/CN.4/2000/9, paras. 726-727).

45. Concerning Dr. Munawar Anees, the Government confirmed that he had been arrested on 4 September 1998 under the Internal Security Act and that he had been convicted on 19 September 1998 of an unnatural offence under section 377 of the Penal Code. The Government further stated that Dr. Munawar Anees had pleaded guilty to the unnatural offence of having allowed himself to be sodomised by Anwar Ibrahim and that he was appealing against the conviction and sentence. The Government denied that he had been held in incommunicado detention and averred that he had at all times been allowed communication with the investigators, especially with regard to matters of his health and nutrition. The Government further stated that he had never been subjected to any coercion but had voluntarily admitted a homosexual relationship with Anwar Ibrahim and had voluntarily provided graphic details of sexual acts. The Government denied that Dr. Munawar Anees had at any time been deprived of sleep and stated that investigations and questioning had been carried out in accordance with the principle of fairness and the Lock Up Rules. The Government asserted that he was at all times treated in a polite manner, that his hair had been cut ordinarily, in accordance with the Lock Up Rules, and that he had been placed in a proper cell with sufficient ventilation and the necessary bedding. The Government denied that Dr. Munawar Anees had been stripped naked, but he had been asked to remove his wearing apparel in accordance with the Lock Up Rules in order to ensure that there were no injuries on his body or parts of his body and that he was not holding any weapons which could have been dangerous in the circumstances.

46. Concerning Sukma Darmawan, the Government declared that he had been arrested on 6 September 1998 and had been detained for 13 days. It denied that he had been held in incommunicado detention as he had been able to communicate with investigators and other persons via the investigators. The Government further stated that on 19 September 1998 he had pleaded guilty "for having allowed himself to be sodomised by Anwar Ibahim". After conviction he had been transferred to the Bukit Aman federal police headquarters pursuant to his own request. He was released on bail pending his appeal to the High Court, which was dismissed on the basis that he had voluntarily pleaded guilty. The Government dismissed allegations of maltreatment as false and baseless, and merely an afterthought to suit his claim that his confession and guilty plea had been involuntary and obtained under duress. The Government stated that he had not been subjected to prolonged interrogation, but that questioning had been carried out in accordance with the Lock Up Rules. He had not been threatened with indefinite detention under the Internal Security Act, but had at all times been treated in a polite manner and had not been stripped naked but had been asked to remove his clothing in order to ensure that he bore no injuries or dangerous weapons. The Government

further stated that he had been placed in a proper cell with sufficient ventilation and the necessary bedding. The Government concluded that since all the allegations were false ab initio, there existed no need for any form of investigation, prosecution or imposition of sanctions. The Government further noted that neither Dr. Munawar Anees nor Sukma Darmawan had reported the matter to the police.

Mexico

47. By letter dated 19 January 2000, the Government replied in connection with Mario Santiz Ruíz and/or Manuel Sánchez Ruíz and Sebastián Gómez Gómez and/or Luis Pérez Díaz - cases transmitted by the Special Rapporteur on 5 November 1998 (see E/CN.4/1999/61, para. 478).

48. On 10 June 1998 an operation ordered by a judicial body resulted in a confrontation between police officers and settlers in the El Bosque Municipality, Chiapas, as a result of which two police officers and eight persons lost their lives. The persons arrested included Mario Santiz Ruíz and/or Manuel Sánchez Ruíz and Sebastián Gómez Gómez and/or Luis Pérez Díaz who, according to the information provided by the Government, made contradictory statements in the Government Procurator's Office on suspicion of being zapatistas who were protecting their support bases; they were subsequently arrested by the security forces. The Government denies that any signs of torture were found.

49. Concerning Odilón Ambrosio Antonio, Maximino Sebastián Juárez, Santiago Antonio Antonio and Marcos Antonio Juárez (ibid., para. 462), the Government stated that it had no record of the case.

Morocco

50. By letter dated 30 December 1999, the Government replied to the allegations concerning Mahmoud Boumahdi transmitted by the Special Rapporteur on 3 September 1999 (see E/CN.4/2000/9, para. 784).

51. The Government confirmed that he had lodged a complaint for torture against a police officer in the course of the preliminary investigation concerning misappropriation of funds. Subsequent investigations revealed that his allegations of ill-treatment were unfounded and that he had been brought before the court in perfectly good health. According to the Government, he confessed of his own free will to the acts of which he was accused. The Government indicated that, on 27 April 1999, Mahmoud Boumahdi suffered a heart attack and had been taken to the emergency room of the Hassan II hospital. Placed under surveillance on the order of the Crown Procurator of Dakhla, the latter had questioned him after receiving permission to do so from a doctor. As his health deteriorated later on, he was transferred to the Avicennes hospital at Rabat. According to the Government, the report of the doctor at the Hassan II hospital confirmed that Mahmoud Boumahdi had suffered a hemiplegia and noted the absence of any visible traces of blows or torture. Lastly, the Government stated that Mahmoud Boumahdi had stated during the judicial police hearing on 23 November 1998 that he had been tortured by the "Polisario". He allegedly suffered from serious injuries to the head and back as well as traumatism.

Peru

52. By letter of 3 February 2000, the Government responded to one of the cases communicated to it by the Special Rapporteur on 12 October 1999 (see E/CN.4/2000/9, para. 848).

53. The Government stated that a military investigation had been launched on 28 January 1999 in respect of the navy personnel allegedly responsible for the offences of aggravated abuse of functions and authority against Raúl Teobaldo Miguel Andahua. The case was referred to the Supreme Court which is to rule on questions of jurisdiction since proceedings have also been instituted in the ordinary courts.

Rwanda

54. By letter dated 9 December 1999, the Government replied to the allegations transmitted by the Special Rapporteur in September 1998.

55. After reaffirming its commitment to human rights, the Government indicated the measures it had taken to reduce the prison population; these included the release of juvenile or elderly prisoners, useful work outside the prison and other measures of a similar nature. Special attention was being paid to minors, and those who had not been released were assisted by specially trained legal staff. Prisoners were cared for and health conditions in prisons had improved considerably. Four per cent of the national budget was appropriated for prisons, which were visited regularly by members of the International Committee of the Red Cross and by local and international non-governmental organizations. The Government added that, as 120,000 persons were still in detention, it was making use of the traditional participative system of justice courts called "Gacaca". Lastly, the Government indicated its intention to ratify all international human rights conventions to which Rwanda was not yet party, and in particular the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

56. Concerning Jean-Claude Ntidendereza (see E/CN.4/1999/61, para. 644), the Government confirmed that he had been arrested in 1997 and then released for lack of evidence. At his trial he had not complained of ill-treatment during his imprisonment.

57. Concerning André Safari (ibid., para. 645), the Government stated that he had never been detained at the Shyorongi military camp and had never been ill-treated.

58. Concerning Juvénal Turatsinze (ibid., para. 646), the Government confirmed that he is being detained in the Givosu prison on suspicion of having participated in the genocide. However he is in good health and is not suffering from an eye infection. His trial is proceeding.

Senegal

59. By letter dated 21 December 1999, the Government replied to the allegations transmitted by the Special Rapporteur in September 1998 and September 1999.

60. The Government denied all allegations of ill-treatment (see E/CN.4/1999/61, para. 650) directed against the military in their struggle of 15 years' standing against the Mouvement des forces démocratiques de Casamance (MFDC) which, according to the Government, had allegedly perpetrated a number of atrocities. The Senegalese armed forces, on the other hand, had always respected international humanitarian law.

61. Concerning Sally Traoré (see E/CN.4/1999/61, para. 651), the Government indicated that, although an investigation had been carried out, no information concerning this person had been found in the archives of the southern military zone, and that the Aniack military camp did not even exist at the time the events in question allegedly took place.

62. Concerning Anquiling Diabone (see E/CN.4/2000/9, para. 914), the Government stated that, according to army archives, he was obviously intoxicated, refused to submit to the authorities and gave trouble when police officers tried to search him; however, it refuted allegations of ill-treatment. The allegations made against his family were also said to be groundless.

Spain

63. By letter dated 14 January 2000, the Government replied, enclosing relevant documentation, to the cases communicated to it by the Special Rapporteur in November 1999.

64. Garikoitz Mendioroz Lizárraga (see E/CN.4/2000/9, para. 917) was arrested in Pamplona on 12 January 1999. Assisted by a lawyer, he said that he did not wish to make a statement and would do so only before a judicial authority; he was given medical check-ups during his detention. On 14 January he was transferred to Madrid where, assisted by a lawyer of his choice, he made a statement before central court No. 1 but did not allege ill-treatment; he was released on bail the same day. Asked about his treatment during his detention he replied that it had been correct, except on the first day when he had been beaten about the head and hooded.

65. On 21 March 1998 the Civil Guard arrested Mikel Azurmendi Peñagarikano (ibid., para. 918) on suspicion of murdering the local government member of the People's Party in Sevilla. Since he offered resistance, his arrest involved violence; the same day he was transferred to Madrid where, assisted by an officially-appointed lawyer, he made statements on two occasions. On 25 March he made a statement before the judge who ordered his imprisonment. During his detention he was given seven medical check-ups. Azurmendi Peñagarikano is assisted by four lawyers of his choice. No allegations of ill-treatment were made.

66. Nekane (M. Dolores) Txapartegui Nieves (ibid., para. 919) was arrested on 9 March 1999 in Tolosa; since she resisted arrest, force had to be used in order to handcuff her. She was transferred to Madrid on the same day. During her detention she was asked on three occasions to make a statement with the assistance of an officially-appointed lawyer. On 13 March, assisted by an officially-appointed lawyer, she made a statement before court No. 3, saying that she had "not been ill-treated". She was examined on six occasions by the forensic surgeon whose reports indicated that he found no signs of ill-treatment or that she had been ill-treated; they did,

however, refer to marks left by restraints and finger marks made when she was subdued. Since 22 March 1999 she has been defended and assisted by her lawyers who have not complained that she was ill-treated.

67. The Government stated that Mikel Egibar Mitxelena (ibid., para. 920) was the alleged official of ETA and its supporting movement. In view of the apparently important statement he made in the course of the trial, it reported the case to various international bodies. On 29 July 1999, the Government informed the Working Group on Arbitrary Detention of the case, enclosing relevant documentation. On 14 December 1999 the Working Group examined the complaint and expressed its views on the matter (opinion No. 26/1999).

68. On 2 February 1999 five youths were arrested in Tolosa (ibid., para. 921) as alleged members of a certain group on the basis of a report mentioning only four of them. The Government does not know why Joseba Saralegui Sanz, arrested in the same circumstances, had not been included in the report. Iker Bea Hostein was arrested in the course of an operation against the presumed authors of the attack against the Tolosa courthouse. Transferred to Madrid, he was examined by the forensic surgeon who, in his report, states among other things that "the examination revealed handcuff marks on both wrists". Further medical examinations were conducted on 3 and 4 February. On 4 February 1999, assisted by his lawyer, he made a statement before the judge to the effect that he had been ill-treated during his political detention.

69. Asier Urrestarazu Eguia (ibid., para. 923) was arrested on 2 February 1999. He was transferred to Madrid and, before making a statement before the judge, was given four medical examinations, the reports on which stated among other things that he "had been treated well during his detention". At the end of his statement before the judge he stated, on being asked by his lawyer, that "although he had not been ill-treated at the police station or on police premises, he had been threatened".

70. Concerning Ismael Fakhri Delgado (ibid., para. 923), the circumstances are the same as those described in the case of Bea Hostein. Following his arrest on 2 February, he was given a medical examination and said he had been treated normally. Subsequently he was transferred to Madrid and examined on two occasions by the forensic surgeon, whose report stated, among other things, that "his treatment had been good; indications of handcuff marks on both wrists". On 4 February, in the presence of his lawyer, he stated before the judge that "... [the statement made to the police] had been obtained by means of threats and ill-treatment".

71. Ricardo Peñafiel Echarri (ibid., para. 923) was arrested on 2 February 1999, together with the persons mentioned above. Transferred to Madrid, he was examined on three occasions by the forensic surgeon whose report relates among other things that "I was threatened and beaten about the head"; on 4 February, assisted by his lawyer, he stated before the judge "that he did not acknowledge any of the alleged unlawful activities described in the police declaration since his statement had been obtained as a result of threats and pressure by the police".

72. José Ignacio Armendáriz Izaguirre (ibid., para. 925), Jesús María Gómez Ezquerro and Juan María Echavarri Garro were arrested on 27 March 1998 in a police operation in Pamplona for alleged collaboration with the ETA; the circumstances of their detention were similar. The Government stated that it had received only the complaint of José Ignacio Armendáriz Izaguirre,

who was examined by the forensic surgeon on the day of his arrest. On 28 and 29 March he was again examined when he was transferred to hospital after "having attempted to injure himself". Assisted by an officially-appointed lawyer, he made a statement during his three days' detention. On 30 March 1998, assisted by an officially-appointed lawyer, he made a statement before central examining court No. 1, according to which "he was subjected to physical and psychological ill-treatment although the blow on his head was self-inflicted". He was assigned lawyers of his choice and made a statement before the judicial authorities on 20 October 1998 the record of which says, among other things, that "everything stated in these proceedings was cooked up by the Civil Guard who beat and 'bagged' him ... The statement made at the police station was obtained by torture. The defence denies that the accused is a member of the ETA group. The sentence handed down by the Criminal Division of the National High Court on 24 June 1999 analyses allegations of the ill-treatment the three persons accused - Armendáriz Izaguirre, Gómez Ezquerro and Echavarri Garro. The judge states that nothing in the medical reports, confirmed by the forensic report during the oral proceedings, suggests that they could have been ill-treated in order to obtain their statements". The three persons sentenced, assisted by their lawyers, have appealed to the Supreme Court.

73. Peio De Vega Martín (ibid., para. 926) was arrested on 27 January 1998 and examined on eight occasions during his detention. On 31 January he was examined by the forensic surgeon, who stated that he did not complain of ill-treatment and did not show any signs of having been ill-treated. The same day, assisted by a lawyer of his choice, he made a statement before the judge according to which "on being asked about the way he had been treated by the Civil Guard during his detention, he stated that he had been beaten and threatened". The judge of central examining court No. 5 sent him to prison without bail effective 31 January 1998. Vega Martín is defended by his lawyers and proceedings are pending.

Tunisia

74. By letter dated 24 December 1999, the Government responded to the allegations communicated to it by the Special Rapporteur in September 1999.

75. Concerning Ahmed Ben Salah Taboubi (see E/CN.4/2000/9, para. 1022), the Government indicated that he had been involved in ordinary law cases and had not been ill-treated.

76. Concerning Hédi Sassi (ibid., para. 1023), the Government stated that during his detention in the Tunis civil prison he had made himself conspicuous by his provocative attitude towards the penitentiary administration by refusing to respect prison regulations and frequently going on hunger strike. However, he was not subjected to any form of violence or abusive treatment. This was confirmed by the investigations carried out following the complaint he lodged with the Tunis court of first instance.

77. Concerning Abdelmoumen Belanes, Béchir Abid and Ali Jallouli (ibid., para. 1024), the Government stated that they had been arrested in December 1995 in possession of tracts likely to cause a breach of the peace. They were not ill-treated during their questioning. The

Government added that Abdelmoumen Belanes had once again been arrested in February 1999 for taking part in a joint scheme intended to cause injury to persons and damage property by intimidation and terror and that he was at present in pre-trail detention on the basis of a warrant.

78. Concerning Imène Dérouiche (ibid., para. 1026), the Government stated that she had been sentenced in March 1998 to 15 months' imprisonment for supporting an illegal extremist association, distributing tracts likely to cause a breach of the peace and defamation of judicial bodies; she had been released on 22 August 1999 after having served her sentence in the Manouba civil prison without having been ill-treated.

79. Concerning Lofti Hammami (ibid., para. 1027), the Government indicated that he had been sentenced in February 1998 to 17 months' imprisonment for supporting an illegal extremist association, the distribution of tracts likely to cause a breach of the peace and defamation of judicial bodies; he had been released on 9 August 1999 after serving his sentence and had not been ill-treated.

80. Concerning Néjib Hosni (ibid., para. 1028), the Government confirmed that he had been sentenced, that he had been released on parole on 14 December 1996, and that at no time had he been ill-treated. According to the Government, the national bar president had publicly expressed his satisfaction at the way the trial had unfolded, and no request for an investigation had therefore been made.

Turkey

81. By letter dated 9 February 2000, the Government responded to cases sent by the Special Rapporteur in November 1999.

82. Concerning 50 persons from Tilkiler and four other villages in the Kahramanmaras province (see E/CN.4/2000/9, para. 1041), the Government stated that 53 persons had been taken into custody between 10 and 20 June 1999 on grounds of providing shelter and assistance to the Kurdistan Workers' Party (PKK). Of the 53 persons, 34 were arrested and 19 subsequently released. The Government stated that medical reports issued from the beginning of their custody until their appearance before the court revealed that none of the persons detained had been subjected to torture or any other inhuman treatment.

83. Concerning Vasfi Karakoç (ibid., para. 1042), the Government stated that he had been detained by the Directorate of Security of Izmir on several occasions. On 6 April 1998, he had lodged a complaint with the Directorate-General of Security of Izmir against a police officer for ill-treatment during his detention, which was subsequently annulled due to lack of sufficient evidence. He was again detained on 31 August 1998, but was released soon after. According to the Government, Vasfi Karakoç had made a statement after his suicide attempt on 2 September 1998 to the effect that he was not complaining about anyone, and his son had made a declaration to the same effect after his father's death. The Government stressed that Vasfi Karakoç had not lodged any complaints following his detention on 31 August 1998.

84. Concerning Deniz Özcan (ibid., para. 1043), the Government indicated that he had been among 32 people taken into custody on 29 February 1996 for participation in illegal

demonstrations on the premises of Istanbul University. He was released on 5 March 1996 following interrogation. On 12 May 1996, he was arrested when he was among 76 people carrying placards, brochures and posters in favour of illegal organizations. He was released as no evidence was found indicating his membership in these organizations. On 1 May 1997, he was again taken into custody, but released on 2 May 1997 by the Office of the Chief Prosecutor. The Government stated that Deniz Özcan was not detained on grounds of his relation to the case of Metin Göktepe, but on grounds of his participation in illegal activities.

85. Concerning Ali Serkan Eroglu (ibid., para. 1044) the Government confirmed that he was found hanging from a belt around his neck in a toilet at the Faculty of Literature of the Aegan University. According to the Government, the investigation launched under the auspices of the Chief Prosecutor of Bornova/Izmir was still continuing at the time of the reply. A further investigation was also being carried out by the Chief Investigator of the Police. The Government indicated that further information would be provided to the Special Rapporteur in due time.

86. Concerning Gazali Turan (ibid., para. 1045), who, according to the information received by the Special Rapporteur, is a woman, but whom the government reply indicates to be a man, the Government indicated that he had been arrested on 21 March 1999 in Izmir during pro-PKK demonstrations. Medical reports issued in March 1999 revealed that he had not been subjected to torture. His case was pending at the time of the reply.

87. Concerning Ali Ekber Öz, his wife Nuran Öz (ibid., para. 1047), Mahmut Yurekli, Besime Öz and Hatice Öz, the Government indicated that they had been taken into custody on 2 October 1994 on the testimonies of arrested members of the PKK on the grounds of their involvement with the PKK. Hatice Öz was found not to be involved and was released on 3 October. Upon permission of the Office of the Chief Prosecutor, the custody period for the remaining detainees was extended to 11 October 1994, when they were transferred to the legal authorities. On the same day, Besime Öz was released and Ali Ekber Öz, Nuran Öz and Mahmut Yürekli were arrested. Also on 11 October, a medical report was issued which revealed that none of the detainees had been subjected to torture or ill-treatment.

88. Concerning the three boys aged 10, 11 and 12 (ibid., para. 1049), the Government stated that they had been arrested when they had attempted to enter a house with the aim of burglary. Before being interrogated, they were sent to the Institution of Forensic Science and were transferred with their medical reports to the Office of the Chief Prosecutor of Küçükçekmece/Istanbul, where they were subsequently released. The Government indicated that information on the security personnel who allegedly ill-treated the children would be forwarded to the Special Rapporteur in due time.

89. Concerning Halil Ibrahim Okkal (ibid., para. 1053), the Government stated that the law enforcement personnel who had committed ill-treatment had been sentenced to a term of 10 months' imprisonment by the Court of Appeal on 24 March 1999.

90. Concerning 16 juveniles and young people (ibid., para. 1055) who were reportedly arrested at Manisa Police Headquarters between 26 December 1995 and 5 January 1996, the Government stated that the decision of the State Security Court of Izmir to sentence 10 young persons aged between 19 and 25 years to a total of 76 years, 3 months and 20 days of

imprisonment on the ground of their membership of the DHKP/C and participation in illegal activities had been quashed by the Court of Appeal. The suspects had subsequently applied to the European Court of Human Rights. On 12 October 1998, the Court of Appeal also overturned the ruling of the Criminal Court of Manisa which had cleared the law enforcement personnel of allegations of torture and ill-treatment and which had led to their release on 11 March 1998. Although the Criminal Court of Manisa subsequently insisted on its decision to acquit, the General Council of the Court of Appeal once again overturned its decision. The Court of Appeal affirmed its position that the responsible law enforcement officials committed the crime of torture and ill-treatment and could not be left unpunished. The Office of the Chief Prosecutor of the Court of Appeal refused a "revision of decision" request by the law enforcement personnel. According to the Government, the Criminal Court of Manisa is now obliged to revise the case and sentence the law enforcement personnel to imprisonment for a minimum period of 14 to a maximum period of 70 years' imprisonment. The first hearing was held on 28 December 1999. The Government also reported that the Medical Doctors' Association of Manisa had asked for a decision to suspend the doctors who had issued erroneous medical reports on the state of health of the young people after they had been released from custody periods ranging from three to six months, a proposal which had subsequently been adopted by the Turkish Association of Medical Doctors.

Uruguay

91. By letter dated 21 January 2000, the Government responded to the cases that the Special Rapporteur had communicated to it on 12 October 1999 (see E/CN.4/2000/9, para. 1120).

92. The Government stated in its reply that Francisco Saavedra and Luis Sora, because of an incident on the public highway involving police officers, were arrested on 23 May 1999 and ill-treated by the latter. The examining magistrate confirmed the facts and on 31 August 1999 ordered the prosecution of the police officers without detention for abuse of authority.
